

R. L. Winthrop.

185
THE
English Clerk's
INSTRUCTOR.

In the PRACTICE of the
Court of KING'S BENCH,
AND
COMMON PLEAS.

VIZ.

In Filling up, and Suing out WRITS of the first Process; in Drawing *Declarations, Pleas,* and *Demurrers*; Making up *Issues,* and *Paper-Books*; Engrossing *Records*; Entering of *Judgments*; Suing out WRITs of *Execution*; WRITs of *Error, Originals, Outlawries, &c.* And in passing of Fines.

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I Shall not detain the Reader with an Account of the End and Design of the following Work, the Title Page sufficiently answering that Purpose ; nor pretend to raise the Credit of the Performance, by undervaluing those who have appeared in the World already ; but submit it entirely to his Censure or Approbation.

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THE
English CLERK'S
 INSTRUCTOR.

The COUNTIES of ENGLAND
 and WALES.

ENGLAND.

- | | |
|--------------------|--------------------|
| 1 B Edford. | 21 Middlesex. |
| 2 Berks. | 22 Monmouth. |
| 3 Buckingham. | 23 Norfolk. |
| 4 Cambridge. | 24 Northampton. |
| 5 Chester. | 25 Northumberland. |
| 6 Cornwall. | 26 Nottingham. |
| 7 Cumberland. | 27 Oxford. |
| 8 Derby. | 28 Rutland. |
| 9 Devon. | 29 Salop. |
| 10 Dorset. | 30 Somerset. |
| 11 Durham. | 31 Southampton. |
| 12 Essex. | 32 Stafford. |
| 13 Gloucester. | 33 Suffolk. |
| 14 Hereford. | 34 Surrey. |
| 15 Hertford. | 35 Sussex. |
| 16 Huntington. | 36 Warwick. |
| 17 Kent. | 37 Westmorland. |
| 18 Lancaster. | 38 Wilts. |
| 19 Leicester. | 39 Worcester. |
| 20 Lincoln. | 40 York. |

B

WALES.

W A L E S.

- | | |
|----------------|----------------|
| 1 Anglesea. | 7 Flint. |
| 2 Brecon. | 8 Glamorgan. |
| 3 Cardigan. | 9 Merioneth. |
| 4 Caermarthen. | 10 Montgomery. |
| 5 Caernarvon. | 11 Pembroke. |
| 6 Denbigh. | 12 Radnor. |

CITIES and TOWNS having a Sheriff or Sheriffs.

Cities of	{ Bristol. Chester. Coventry. Gloucester. Lincoln. London. Norwich. York. Town of Nottingham. }	Have two Sheriffs.
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Cities of	{ Canterbury. Exeter. Worcester. }	Have one Sheriff.
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Towns of	{ Kingston upon Hull. Newcastle upon Tyne. Pool. Southampton. }	
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Difference

Difference in FORMS.

King's Bench Forms.

Common Pleas Forms.

1. **A**T London, to wit, in the Parish of the Blessed Mary of the Arches, in the Ward of Cheap, London.

2. In the sixth Year of the Reign of the Lord George the Second, now King of Great Britain, and so forth.

3. Wherefore he prays Judgment if the aforesaid Plaintiff his Action aforesaid on this Account against him ought to have or maintain.

4. As to come by Force and Arms, or any Thing that is against the Peace of the said Lord the now King, saith, that he is not thereof guilty.

5. And of this puts himself upon the Country, and the aforesaid Plaintiff likewise, — Therefore let a Jury come thereupon before the

1. **A**T London, in the Parish of the Blessed Mary of the Arches, in the Ward of Cheap.

2. In the sixth Year of the Reign of the Lord the now King.

3. Wherefore he prays Judgment if the aforesaid Plaintiff ought to have his Action aforesaid against him, &c. *Conclusion to a Plea in Bar.*

4. As to come by Force and Arms, saith, that he in no wise is thereof guilty, so as the aforesaid Plaintiff above against him complains.

5. And concerning this puts himself upon the Country, and the aforesaid Plaintiff likewise; therefore it is commanded the Sheriff, *Note. You write the Plaintiff's Name instead of the Plaintiff.*

Difference of Forms.

the Lord the King at <i>Westminster</i>, on <i>Tuesday</i> next after three Weeks of the Holy Trinity, and who neither, &c. to be informed, &c. because as well, &c. the same Day is given to the Parties aforesaid there, &c.	riff, that he cause to come here from the Day of the Holy Trinity, in three Weeks, twelve, &c. by whom, &c. and who neither, &c. to make a Jury, &c. because as well, &c.
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If the Plaintiff take Issue then.

And he prays, that this may be enquired by the Country, and the aforesaid * *Defendant* likewise, &c. therefore let a Jury come thereupon, &c. as before.

And have there then this Writ

Took and carried away.

Sealed.

And other Enormities then and there brought on him, against the Peace of the said Lord the now King, to the Damage of him the Plaintiff, Ten Pounds, and thereof brings Suit.

*At the End
of a Declaration.*

If the Plaintiff take Issue then.

And he prays, that this may be enquired, by the Country and the aforesaid * *Defendant* likewise; therefore it is commanded the Sheriff, &c. as before.

And have there this Writ

Took and drove away.

Signed.

Wherefore he saith, that he is made worse, and hath Damage to the Value of Ten Pounds, and thereupon brings Suit, &c.

And other Enormities, to the great Damage, and against the Peace.

Next

Of the four Terms.

5

Next it will be proper to speak of the Four Terms, and their Returns for Writs.

Of the Four TERMS.

THREE Weeks after *Michaelmas* Day, Michaelmas Term always begins the 23d of October, except Sunday. (that is) the 20th Day of *October*, is the *Essoin* Day of *Michaelmas* Term, and the fourth Day after inclusive, is the first Day of the Term, which is always the 23d of *October*, if it be not *Sunday*; but if *Sunday*, then the 24th, and endeth the 28th of *November*, if not *Sunday*, then the 29th. See the Statute, 16 *Char. I. c. 6.* for the Limitation and Abbreviation of this Term, and the Return thereof.

Hillary Term beginneth the 23d Day of *January*, if not *Sunday*, but more exactly that Day eight Weeks on which *Michaelmas* Term ended (its *Essoin* Day being *January* 20.) and endeth the 14th Day of *February*, if not *Sunday*, being always the same Day of the Week that *Michaelmas* Term beginneth. Hillary Term the 23d January except Sunday.

By reason you have often Occasion in *Michaelmas* Term to make Writs returnable in *Hillary* Term, before the common Almanacks are published, it may be of use to observe, that this Term beginneth the same Day of the Week that *Michaelmas* Term endeth, and endeth the same Day of the Week that *Michaelmas* Term beginneth, and both Terms begin the same Day of their respective Months.

Easter Term beginneth the *Wednesday* Fort- Easter Term Wednesday Fortnight after Easter. night, or Seventeen Days after *Easter* Day; its *Essoin* Day being *Sunday* before, but held *Easter*.

Of the four Terms.

on *Monday*, and ends on *Monday* before *Whit-sunday*.

Trinity Term
Friday after
Trinity-Sun-
day.

Trinity Term beginneth the *Friday* after *Trinity-Sunday*, being the same Day of that Month on which *Easter Day* fell on in its Month ; its *Essoin Day* being *Monday* before (for *Thursday* being *Corpus Christi*, it is pretermitted) and ends on *Wednesday* Fortnight after the Term beginneth. See 32 H. 8. Cap. 21. This Term had Seven Returns, but by this Statute abbreviated for fear of an Infection.

The issueable Terms are *Hillary* and *Trinity* only, so called, because in them the Issues are joined, and the Records made up, which are to be carried down, and tried at the *Lent* and *Summer Assizes*, which immediately follow each of these Terms ; and Note, that the whole Term, in Construction of Law, is accounted (in many Cases) but one Day, and therefore a Judgment had, or a Plea put in as of the first Day of the Term, but such Judgment shall not affect a Purchaser, but only from the Day such Judgment was sign'd.



Michaelmas

Michaelmas Term contains five Weeks and two Days, and hath six Returns.

In the Common Pleas, and upon all Writs
returnable wheresoever.

1. FROM the Day of St. Michael in three Weeks.
2. From the Day of St. Michael in one Month.
3. In the Morrow of *All Souls*.
4. In the Morrow of St. Martin.
5. In the Oſtaves (eight Days) of St. Martin.
6. From the Day of St. Martin in Fifteen Days.

In the King's Bench, upon Latitats,
alias Plur. Diftring. &c. ſay,
ON (Monday) next after three Weeks of St.
Michael.
On Saturday next after one Month of St. *Mich*.
On Saturday next after the Morrow of *All Souls*.
On Monday next after the Morrow of St. *Martin*.
On Monday next after the Oſtaves (eight Days)
of St. *Martin*.
On Monday next after the *Quindif*. Fifteen
Days of St. *Martin*.
Mentioning a Day certain.

B 4

Hillary

Hilary Term contains three compleat Weeks, and bath four Returns.

Common Pleas.

In King's Bench in all Writs not returnable wheresoever, say,

- 1. **I**N eight Days of St. Hilary.
- 2. **F**rom the Day of St. Hilary in fifteen Days.
- 3. In the Morrow of the Purification of the Blessed Mary.
- 4. In eight Days of the Purification of the Blessed Mary.

- O**N — next after eight Days of St. Hilary.
- O**n — next after fifteen Days of St. Hilary.
- O**n — next after the Morrow of the Purification of the Blessed Virgin Mary.
- O**n — Day next after the eight Day of the Purification of the Blessed Virgin Mary.

Easter Term contains three compleat Weeks, and bath four Returns.

- 1. **F**ROM the Day of Easter in fifteen Days.
- 2. **F**rom the Day of Easter in three Weeks.
- 3. From the Day of Easter in one Month.
- 4. From the Day of Easter in five Weeks.
- 5. In the Morrow of the Lord's Ascension.

- O**N — Day next after the fifteenth of Easter.
- O**n — Day next after three Weeks of Easter.
- O**n — Day next after one Month of Easter.
- O**n — Day next after five Weeks of Easter.
- O**n — Day next after the Morrow of our Lord's Ascension.

Mentioning a Day certain.

Trinity

Of the four Terms.

Trinity Term wants one Day of three Weeks, and baith four Returns.

Common Pleas.

(In King's Bench in all Writs not returnable wheresoever, say,

1. IN the Morrow of Holy Trinity.
2. I In eight Days of Holy Trinity.
3. From the Day of H. Trinity in fifteen Days.
4. From the Day of H. Trinity in three Weeks.

Of the four Terms.

- O N—Day next after the Morrow of H. Trinity.
- On—Day next after eight Days of H. Trinity.
- On—Day next after fifteen Day of H. Trinity.
- On—Day next after three Weeks of H. Trinity.

So that the *Common Pleas* Writs generally are returnable on no Day certainly expressed, but only *before our Justices at Westminster, from the Day of St. Michael, in three Weeks*, — except Writs not by Originals, as Attachments of Privileges, which must have a Day certain.

And so that the *King's Bench* Writs are mostly returnable on some certain Day of the Week next after some certain Return, as on Monday *next after three Weeks of St. Michael, and the like*, except the Proceedings be by way of original.

Of

Of RETURNS.

IN each Return throughout the respective Terms, are four special Days, to wit, 1. The Effoin Day (that is) the Day in the Writ mentioned. 2. The Exception Day. 3. The Return of Writs Day. 4. The Day of Appearance, which is the fourth Day after, being the last of the Return, and the Day on which the Court sits.

The first Effoin Day regularly in Law, is accounted the first Day of the Term, and is the fourth Day inclusive, before what is commonly called the Beginning of the Term, and on that Day one of the Judges formerly sat to take Effoins. So that the fourth Day after, commonly called the Beginning of the Term, seems to be a Day of Grace given by the Court for the Parties appearing.

The Effoin Day of every Term is said to be (in) in the Return, and every Day after is said to be (after) as *on Monday in eight Days of the Holy Trinity, on Thursday next after eight Days of the Holy Trinity*. The Day that every Term begins, and the Day every Term ends, are the first and last Days of Appearance.

As every Term is said to begin on the fourth Day after of the first Return thereof, so it always ends the fourth Day after the last Return; but if the fourth Day fall on a *Sunday*, then the Term begins or ends on the *Monday* after, except in *Trinity* Term, the Effoin Day of the first Return whereof is always *Monday*, and regularly the fourth Day

is the *Thursday* after, but that being *Corpus Christi* Day, and no Court Day, it is held the *Friday* after : Tho' the *Effoin* Day fall on a *Sunday*, yet the *fourth* Day after is computed from that Day, as from any other, and is to be the *Wednesday* following ; whereas had the *Effoin* Day been *Monday*, the *fourth* Day would have been *Thursday* ; and if the *fourth* Day, *Returns of Writs*, or *Exception Days* fall on *Sunday*, the same are kept on *Monday* next following, and so is the *Effoin* Day when it falls on a *Sunday* ; and in such Cases, the *Exception* and *Return of Writs Days* are included in one, to wit, *Tuesday*. All the *Effoin* Days in *Easter* Term fall on *Sunday*, except the *Morrow* of the *Ascension*, and so also do all of *Trinity* Term, except the *Morrow* of the *Holy Trinity*.

The *Effoin* Days falling on *Sundays*, and held on *Mondays*, are the *Quindism* or *fifteen* Days of *Easter*, *three Weeks* of *Easter*, *fifteen* Days of *Trinity*, *three Weeks* of *Trinity*.

And note further, That in the *King's Bench*, all *Process* both before *Judgment*, upon *Lattats*, alias *Plures*, *Bill of Middlesex*, *Distingas nup. Vic. Habeas Corpus*, *super Cepi Corpus*, and *Habeas Corpus ad fac*, & *rec.* must be returnable at Days certain, and may be so made upon any Day in Term, which is a Court, next after any of the aforementioned Returns. And note, That the same Day of the Week that every Term begins, is a sure Day to make Writs returnable upon in the *King's Bench*, through all the Return of every such Term (except the last Return.)

The same
Day Term be-
gins, Writs to
be returnable.

But

No Court
Days.

But all non-juridical Days must be avoided, as *Sundays, All-Saints, All-Souls, on the first and second of November in Michaelmas Term, the Feast of the Purification, the second of February in Hillary Term, Ascension-day in Easter Term, and Midsummer-day in Trinity Term* (if it so happens) are not Court Days in the *King's Bench*.

Note also, If you make your Writs in the *King's Bench* returnable upon the Effoin Day of any Return in the Term time, as you may do, you must also express the Day of the Week certainly, as on *Thursday in one Month of St. Michael, on Thursday in the Morrow of All-Souls, &c.* But this is seldom used, but upon Trials and Writs of Enquiry, in order to get some Advantages in that Term: If your Effoin Day happens on a *Sunday*, and therefore your Writ is returnable on the *Monday* after, you say *on Monday next after one Month of St. Michael, and not in one Month of St. Michael.* But the Form in the *Common Pleas* is from the Day of *St. Michael, &c.*

So that all Process by Bill in the *King's Bench* is returnable at a Day certain, naming the Day of the Week, to wit, at *Westminster on Monday* in (but generally on *Thursday* next after) *the Morrow of the Purification of the Blessed Mary, or the like*; but if the Process is by Original, then it is before us (naming neither the Day of the Week, nor the Place) *in the Morrow of the Purification of the Blessed Mary, wheresoever we shall then be in England.*

Note also, That the Writs of the *King's Bench* returnable wheresoever, as in the *Morrow of the Holy Trinity, &c. in eight Days of*
the

the Holy Trinity wheresoever, &c. and the like are Writs grounded upon Originals out of Chancery, or upon Writs of Error out of the *Common Pleas*, and out of inferiour Courts, Process to the Outlawry, *Retor. habendum, Capias in Withernam. audita Querela, accedas ad curiam*, and such like.

So generally in the *Common Pleas*, all original Writs in Actions are returnable upon a *C. B.* *Returns in* Return, as *in the Morrow of the Holy Trinity, from the Day of St. Michael in three Weeks, &c.* and so all Process and Proceedings thereupon.

But all Writs and Actions in the *Common Pleas* not by Originals out of Chancery and Proceedings thereupon, as Attachments of Privilege, Bills against priviledg'd Persons, Prohibitions, and the like, are returnable, and have Continuance to Days certain, as on *Monday in one Month of Easter, on Tuesday next after the Month of Easter, &c.*

Jurisdiction and Authority of the Court of King's Bench.

THE Jurisdiction of this Court is general, and over all *England*, and hath Cognizance of both Criminal and Civil Causes, being divided into a Crown-side and a Plea-side.

The Crown-side determines all Criminal Matters, wherein the King is Plaintiff, as Treasons, Felonies, Murders, Rapes, Robberies, Riots, Breaches of the Peace, and all Causes prosecuted by way of Indictment, Inquisition or Information, and into this Court, Indictment from all inferior Courts, and Orders

ders of Sessions may be removed by *Certiorari*, &c.

The Plea-side holds Pleas of all personal Actions prosecuted by Bill or Writ, as Actions of Debt, Detinue, Covenant Accounts, and of all Actions of the Case, either upon Promises, Trover and Conversion, Words, Penal Statutes, and all other personal Actions, and likewise real and mix'd Actions, as Ejectment, Replevin, Trespass, *Quare clausum fregit waste*, &c. and against any Person in the Custody of the Marshal of the Court, (as every one sued here is supposed to be) and in all personal Actions against any Officer, Minister, or Clerk of the Court. This Court may examine and correct the Errors of the *Common Pleas*, and other inferior Judges and Justices; it can reverse a Judgment given in the *King's Bench* in *Ireland*; it can repeal the King's Letters Patent by *Scire facias*; it granteth a *Habeas Corpus*, on Motion, to relieve Persons wrongfully imprisoned, restores free Men unjustly disfranchised, and may bail any Person whatsoever, whereailable by Law.

The Court of *King's Bench*, had originally no Jurisdiction in any Action of *Debt* or *Covenant*, unless one of the Parties had the Privilege of this Court, or the Defendant was in Custody of the Marshal for some Trespass or Criminal Matter, and in that Case they had Authority to hold Plea of any such Action, but they could not issue their Process against a Person who was at large, and hold him to Bail in any Case of that Nature. To supply this Defect, in the Reign of King *Charles II.* they introduced a Clause in the Bill of *Middlesex*,

sex, and Writ of *Latitat* (which are their first Proceſs) called an *Acetiam*, whereby the Defendant was to answer to a Bill to be exhibited against him in that Court by the Plaintiff, in a Plea of Debt or Covenant, as the Case happened to be ; and by this Method they held the Defendant to Bail in an Action, in which otherwise they could have had no Authority to take Bail, and continue so to do at this Day.

The Judges and Officers of the Court of King's Bench.

THE Judges are the Lord Chief Justice, *The Judges.* and three other Judges.

The Officers of the Crown-side, are,

The Clerk of the Crown.

The Secondary of the Crown-side.

The Clerk of the Rules there, and eight other inferiour Clerks, who attend in the Crown Office, and act as Attornies for the Dispatch of Business.

On the Plea-side, are,

The Prothonotary or Chief Clerk of the Court, who is Master of the *King's Bench* Office, and hath his Secondary who executes his Office, and his Clerks are the proper Attornies here, who subscribe all Writs, and enter up all Declarations, Pleas and other Proceedings in his Name, to wit, *Ventris*.

The

The Judges and Officers

The Master
of the King's
Bench Office.

The *Secondary*, who is commonly called the Master, constantly attends the Sittings of the Court, to receive Matters referred to him by the Judges, to be by him examined and reported to the Court; he signs all Judgments, Taxes, Costs, and informs the Court in Point of Practice.

Deputy
Stamper.

He hath also a Deputy, who keeps the Stamp for signing all *Latitats*, *Habeas Corpus*, *Certioraries*, *Scire facias*, *Procedendo's Elegit*, *Restitutions*, *Habeas facias possessionem & Seisinam*, *Supersedeas*, *Prohibition*; he also keeps Remembrances thereof, so that you may know if any one of those Writs be made out, by searching with him, also all Writs returned, *Posteas*, *Writs of Error*, *Special Bail* after they are accepted, and *Affidavits of the Plaintiffs Debt*, for issuing Process of ten Pounds or upwards, are filed in this Office; he generally receives all Money ordered to be paid into Court.

Custos Bre-
vium.

The *Custos Brevium* is the chief Officer belonging to this Court, whose Office is to receive and keep all the Writs, and to put them on the Files every Return by it self, and at the End of every Term, to receive of the Master all the Records of *Nisi prius*, called the *Postea*.

Clerk of the
Nisi prius.

The Clerk of the *Nisi prius* examines and seals all Records of *Nisi prius* for Trials at the Assizes, and for *London* and *Middlesex*, and is Clerk of the *Essoins* and Warrants of Attorney, and Clerk of the Treasury, where all Records of this Court are filed, and from him you take Numbers for Rolls; all Copies of Judgments and other Proceedings on Record.

The

of the Kings Bench.

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The Clerks of the Papers receive all special Pleas, Demurrers and Pleadings sign'd by Counsel, and make up the Paper Books thereof, which the Plaintiff's Attorney always bespeak, and they give a Rule on the Side of the Book for the Defendant's Attorney, to bring it to him again to be entered in four Days, or else Judgment to go by Default; and they constantly attend the Court, read all Affidavits, Records and Proceedings there, and enter down in their Books the Names of the Causes that are to be argued.

Clerk of the Papers.

The Clerk of the Declarations; with him are left all Copies of Declarations, where the Defendant's Attorney is not to be found, and he makes an alphabetical Paper of such Declarations, that the Defendant's Attorney may search for, and have the same delivered to him; with him are also filed a Copy of all Declarations against Prisoners, and in many Cases, Declarations engrossed on Parchment.

Clerk of the Declarations.

The Signer of the Bills of Middlesex keeps a Book of Entry of the Names of the Plaintiffs and Defendants, in all such Writs, and files all Affidavits of the Plaintiffs Debt for issuing such Bills of *Middlesex*, for ten Pounds or upwards, where the Defendant is to be arrested.

Signer of Bills of Middlesex.

The Clerk of the Rules takes Notice of all Rules and Orders made in Court, except those of the Crown Side, and afterwards draws them up, and enters them in a Book at large, for which he has eight Pence, and for the Copy of each Rule Four Pence, if in Term; also he files all Affidavits used in Court, and makes Copies at Four Pence per Sheet, and

Clerk of the Rules.

The King's Bench Officers.

with him are given all Rules of course, as to *Answer and Reply*, or *Rejoin* and on *Postea's*, *Writs of Enquiry*, and *Scire facias*, &c.

Clerk of the Errors. The Clerk of the *Errors* allows all Writs of Error, and makes *Supersedeas* thereupon into what County you please; he also makes Transcripts of Records to be carried either into the Exchequer Chamber, or House of Lords.

Note, There is a particular Clerk for the House of Lords.

Clerk of the Bails. The Clerk of the *Common Bails* and *Posteas*, files the Bail Pieces, and marks the *Posteas*, &c and he or his Deputy attends in the *King's Bench* Office for that Purpose, and with him you file all Affidavits of the Service of the Process (for Common Bail) on the Defendant, if he does not appear.

Clerk of the Docquets. The Clerk of the *Docquets* enter all Judgments, Issues and Proceedings in this Court; he keeps *Docquets* of all such Judgments and Entries, and with him you may find if any Judgment be entered, or any Record filed, and the Number Roll thereof; he keeps a Book wherein you enter your Commitments and Surrenders, and another Book for entering your general Issues.

The Filazers. Here are also Filazers in this Court, among whom the Counties are divided, who make the mean Process after the Original, in suing to the Outlawry, and have the Benefit of all Process and Entries thereupon: The Person chiefly used is the Filazer and Exigenter for *London* and *Middlesex*; Affidavits of the Debt are filed with him; he makes out all special Writs on Originals, and with him you enter your Appearance, or give Bail to such Writs.

The

The Kings Bench Officers.

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The *Master* of the Seal Office, who keeps the Great Seal for sealing all Writs issuing out of this Court. *The Master of the Seal-Office.*

The *Marshal* of the King's Bench, or his Deputy, ought always to attend the Court, to receive into his Custody such Prisoners as shall be committed : And *note*, Every one sued in this Court, is supposed in the Declaration to be in his Custody ; but by the Statute *William and Mary*, the Plaintiff may declare against Prisoners in other Goals. *The Marshal.*

The *Crier* makes Proclamation of Summoning and Adjourning the Court ; calls Non-Suits, and swears Jurymen, Witnesses, &c. *The Crier.*

There are *Tipstaffs* who attend each of the Judges in Court, and at their Chambers, and they take Persons into Custody by Rules of Court, or a Judges Warrant. *The Tipstaff.*

The Porter.

Of the Laws of ENGLAND.

IT is not amiss that our young Clerk should be informed, at least in general, wherein consists the Law which he is to practice ; towards which Purpose he may observe, that the municipal Law of *England* consists of three Parts.

First, The Common Law, which is nothing else but the general Customs of the Kingdom, which were in Force before the coming in of *William* the Conqueror, and never were, nor yet are collected or reduced into Writing, at least by any publick Authority. *Common Law.*

Secondly, Particular Customs of certain Places, which only in those Places obtain the Force. *Customary Law.*

Of the Laws of England.

Force of a Law: As the Custom of *Kent*, where the Lands which they call *Garvelkins* Lands, by that Custom descend to all the Heirs Male in equal Proportion; and several other Customs in Force only in that County. The Customs of *London*, which are very numerous. The Customs of Manors, by which some Lands descends to the youngest Sons; this Custom is called *Borough English*: And these private or particular Customs differ from Common Law in this, that they only pass for Law in those Places where they have been received and allowed for Customs beyond the Memory of Man; whereas the Common Law is the general Custom in Force all the Kingdom over, unless altered by Act of Parliament, and not restrained to one particular Place.

Statute Law. Thirdly, The Statute Law or Acts of Parliament, which are Bills passed by both Houses of Parliament, with the Royal Assent thereto (and is superior to both the other Laws, either to explain, alter, or annul the old, or enact new Laws.

And these are all comprehended in this Distich.

*Jus commune vetus, mores, consulta Senatus
Hæc tria jus Statuunt, terra Britannia, tibi.*

*Civil and
Canon Law.*

And it may perhaps be said, That Part of the Civil Law, and the Canon Law, are also a Part of the Laws of *England*, they being in Force, so far as they are consistent with the Laws of the Land, in Causes litigated in the Spiritual Courts, and Courts of Admiralty; but not being in Force in our Courts of Common

mon Law, we do not take Notice of them as King's Bench. the municipal Laws of the Land.

Also adjudged Cases in approved Reports, *Reports.* are generally held for Law in the Courts of Justice; and even the Rules of Court do pass for Law in the Courts where they are made; at least they must be looked upon so by the Clerks and Practisers. As for Instance, If an Attorney do not plead in time, according to the Rules of the Court, Judgment and Execution shall often go against his Client without Remedy.

Of ACTIONS and ARRESTS.

BY Stat. 12. Geo. cap. 29. it is enacted, That *N^o Arrest under 10 l.* in all Cases, where the Cause of Action does not amount to the Sum of Ten Pounds or upwards, in this or any other superior Court, or to the Sum of Forty Shillings or upwards, in any inferior Court, and the Plaintiff shall proceed by way of Process against the Person; in such Case, the Defendant, or Defendants are not to be arrested, but must be *Defendant served with copy of Process.* personally served within the Jurisdiction of the Court, with a Copy of the Process; and if the Defendant does not appear at the Return of the Process, or within four Days after, the Plaintiff upon Affidavit made (of such personal Service) and filed in Court, may enter a common Appearance, or file common Bail for the Defendant, and proceed thereon, as if such Defendant had entered an Appearance, or filed common Bail himself; but if the Cause of Action shall amount to Ten Pounds or upwards, *If 10 l. or above, Affidavit be made such there* Affidavit shall be made and filed of

King's Bench. such Cause of Action; which Affidavit may be made before any Judge or Commissioner of the Court out of which such Process shall issue, authorised to take Affidavits in such Court, or else before the Officer who shall issue out such Process, or his Deputy; and for such Affidavit, one Shilling over and above the Stamp Duties shall be paid, and no more,

And the Sum mentioned in the Affidavit endorsed on the Writ, the Sheriff shall take Bail for no more.

and the Sum or Sums specified in the Affidavit, shall be endorsed on the Back of the Writ or Process, for which Sum or Sums so endorsed, the Sheriff or other Officer to whom such Writ or Process shall be directed, shall take Bail, and for no more; but if any Writ or Process shall issue for Ten Pounds or more, and no Affidavit and Endorsement shall be made, as aforesaid, the Plaintiff shall not proceed to arrest the Defendant, but shall proceed in the same Manner as is directed, where the Cause of Action does not amount to the Sum of Ten Pounds in a Superior Court, or Forty Shillings in an inferior Court. This Act to continue in Force five Years (from the 24th of June 1726) and from thence to the End of the next Sessions of Parliament.

Peers, &c. not to be arrested, and how to proceed against such.

Next, You must consider whether the Defendant be liable to an Arrest; for Peers of the Realm, Ambassadors and their Servants, (and Members of the House of Commons, and their Servants during the Time of Privilege) are not to be arrested, Corporations and Companies cannot be arrested; but against these you must proceed by *Distringas*, of which more hereafter.

Of Arrests and First Process.

ALSO Clerks of the Office, and Attornies ^{Attornies} and privileged Persons belonging to the ^{how to proceed} Courts of Justice are not to be arrested, but ^{against them.} must be sued in another manner; for if they are arrested, they may plead their Writ of Privilege, and come off without Bail. Against these you are to file a Declaration, of which you must deliver them a Copy, and they must plead the same Term, if you deliver it in time, and give Rules: And so it is, if a Clerk ^{Plead the} or Attorney be Plaintiff, the Defendant must ^{same Term as} give a Plea the same Term, and cannot im- ^{Declaration} ^{delivered at} ^{the Suit of an} ^{Attorney with-} ^{out Impar-} ^{lance.} ^{Wales and} ^{County Pala-} ^{time.} ^{Quo minus.} ^{Exchequer.}

Yet Note, a *Latitat* in the ensuing Form, may be executed in the County *Palatine*, (*viz.*)

King's Bench.

Latitat.

GEORGE the Second, by the Grace, &c. To our Chamberlain of our County Palatine of Chester, or to his Lieutenant (Deputy) there, Greeting: Whereas we had lately commanded our Sheriff of Middlesex, (&c. as in another Latitat unto in thy County) We therefore command thee, that our Writ under the Seal of our County Palatine aforesaid, to be made in due Manner, and to be directed to the Sheriff of the County of Chester, thou cause to be sent to the same Sheriff, that he may take the aforesaid A. B. if he shall be found in his Bailiwick, &c.

You may also have a special Latitat in the like Form to Durham.

This is generally called a special *Capias*, wherein the Action is set forth at large.

You may have another Sort of a Special Latitat, by way of an original, in order for a Trial the same Term it is returnable, provided the Writ be returnable the first or second Return in that Term: You must draw a *Precipe* at large for the Philazer, but you may make out the Writ your self for Expedition, and carry it with the *Precipe* or *Pone* for him to sign, Returnable, &c. wheresoever, &c.

So then, taking it for granted, that the Defendant is liable to an Arrest, and that he doth not live in any of these exempted Places, and that the Plaintiff is not a Clerk or Attorney of the Court (for then he may have an Attachment of Privilege to arrest the Defendant) in such Cases (after the Plaintiff has made Affidavit of his Debt) generally the first Process of the Court is a Bill of *Middlesex*, which is a Precept of the Court, and not the King's Writ, nor in his Name, returnable at a Day certain; it hath no Test, nor is it used, but where

The Clerks in Chancery are sued in the petty Bag Office.

where the Plaintiff is to proceed by Bill, King's Bench. without original Writ. This Precept is to arrest the Defendant in *Middlesex* only, and not elsewhere: But if the Defendant live in *London*, or in any other County, then you must ^{Bill Middle-} make out a *Latitat* directed to the Sheriff or Sheriffs of that Place.

Which *Latitat* supposeth also a Bill of *Middlesex* to have been first sued out.

But for the better Understanding of the Nature and Reason of this Bill of *Middlesex*, we shall repeat something of the ancient Practice of the Court which originally followed the King, and kept where-ever he was in *England*, and that is the Reason, that when you sue by Original, whereof you will herein find some Instructions in the Title Ejectment, then all your Writs must be returnable, *wheresoever we shall then be in England*, and not at *Westminster*; which ancient Practice is still sometimes very necessary, pursuing the old Method used before the Court was settled at *Westminster*; after which Settlement this Bill of *Middlesex* was given to arrest Persons that lived in *Middlesex*, and if they could not be found there, the Sheriff returned, *that he is not to be found*, and thereupon a *Latitat* issued to take the Defendant in any other County; so that the *Latitat* was in the Nature of a *Testatum Bill* of *Middlesex*, and did always suppose a *Bill* of *Middlesex* to be taken out and returned before; and so it is recited in the *Latitat*, as you may observe by the Word *Testatum* therein, though the taking out of the Bill of *Middlesex* thereupon hath been long since omitted.

Original.

And

King's Bench,

Bill of
Middlesex
may happen to
be a Bill of any
other County.

And here you must observe, that tho' it is generally called a *Bill of Middlesex*, yet it may happen to be a Bill of any other County; for Instance, when the Court of *King's Bench* was held at *Oxford* by reason of the Visitation, then it was a Bill of *Oxford*, and so supposed in the *Latitat*, and not Sheriff of *Middlesex*; and also observe, that the ancient Practice was, that the Plaintiff's Declaration, which is also called a Bill (as in the Record of *Nisi prius* (*viz.*) *Brought here into Court then there his certain Bill, &c.*) being engrossed in Parliament, was filed in the Office (as it is still used in many cases) and very often the Return of the Bill of *Middlesex* was endorsed upon it: So that when the Proceeding is not by *Original*, nor by *Distingas*, which is against Peers of the Realm, Corporations and Bodies politick, nor against Clerks of the Office, and Attornies and Prisoners, the first Process generally used is this Bill of *Middlesex*, the Form whereof follows.

The Form of the Bill of Middlesex.

You may
put four De-
fendants in
one such Writ.

Middlesex ff. **I**T is commanded the Sheriff, that he take A. B. if he shall be found in his Bailiwick, and him safely keep, so that he may have his Body before the Lord the King at Westminster, on Wednesday next after three Weeks of St. Michael (the Day of the Return) to answer C. D. of a Plea of Trespass, and that he have there then this Precept.

By Bill Ventris.

And

And on the Backside write the Attorney's King's Bench Name that sues it out, and the Day of the Month.

On this Process, if the Plaintiff has not made Affidavit, or the Debt be under Ten Pounds, the Defendant is not to be arrested, but you must serve him personally (within the County of *Middlesex*) with a Copy of this Precept; and if the Defendant does not appear at the Return of the Writ, or within four Days after the Plaintiff (upon Affidavit being made of such personal Service, which Affidavit shall be filed *gratis*) may file common Bail for the Defendant, and proceed thereon in the same Manner as if such Defendant had himself filed common Bail; but if the Action be for Ten Pound or above, and Affidavit has been made, as is before directed, the Sum mentioned in such Affidavit must be endorsed on the Back of the Writ or Process, in order to hold the Defendant to good Bail; then after the Words of a Plea of Trespass, you must add.

And also to a Bill of him C. D. against the aforesaid A. B. for Ten Pounds of Debt, according to the Custom of the Court of him the Lord the King, to be exhibited before the King himself, and that he have, &c. (as above.)

Or 20, 30, 40 l. according as the Sum is in the Affidavit.

Or if there be any other special Cause for Bail, it must be added with an (*Acetiam*), and also of a Bill, for Trespass alone will not hold the Defendant to Bail. As

Note, No Acetiam against Executors or Administrators or Heirs at Law.

If for Trespass and taking away Goods, say, For taking and carrying away of the Goods and Chattels of him C, to the Damage of twenty Pounds, according to the Custom, &c. as before.

For

- King's Bench. *For detaining the Goods and Chattels of him*
 Detinue. *C, to the Value of Forty Pounds, according to*
&c.
- Trover. *For converting and disposing of the Goods and*
Chattels of him C, to the Value of Forty Pounds,
according to, &c.
- Covenant. *For Breach of Covenant, to the Damage of*
him C, Sixty Pounds, according to the Custom,
&c. as before.
- Assumpsit. *And also of a Bill of him C, against the*
aforesaid A, for Twenty Pounds upon an (As-
sumption) undertaking, according to the Custom,
&c. as before.
- Stat. 13. *But in Case the Cause of Action is for*
 Car. II. cap. 2. *Words or Ejectment, or Trespass only, no*
Special Bail is required. Yet if it be a dan-
gerous Assault and Battery, as the breaking a
Man's Skull, the endangering the Loss of an
Eye, or a Mayhem, the Plaintiff may make
Affidavit before one of the Justices, setting
forth his Case, and the Judge, as he sees
Cause, will order the Defendant to be held to
Bail in such Sum as he shall think fit, and then
it is usual to insert in the Writ, and also a Bill
of him C. D. against him A. B. for beating,
wounding and evil-treating to the Damage of
him C, Twenty Pounds, according to, &c. or as
the Case is; and the Plaintiff's Attorney ought
to be careful not to omit such holding the
Defendant to Bail, least after the Trial, the
Defendant being cast should absent himself.
- An Affidavit must be made of the Facts.*

*An Affidavit to obtain a Special
Acetiam.*

A. B. of *W.* in the County of *S.* Clerk, maketh Oath, that on *Thursday* the 24th Day of *August* last past, he, this Deponent, going to view, whether the Tythe Hay, on the Lands of *C. D.* of *W.* aforesaid, were ready to be set forth, the said *C. D.* did then, in the said Field, without any reasonable Cause, in a violent Assault, beat and throw this Deponent on the Ground, this Deponent making no Opposition or Resistance against the said *C. D.* but this Deponent being rescued by some Persons present from the said *D.*, the said *D.* did again, as soon as he got loose from the Persons that rescued this Deponent, a second time assault, throw down, beat and kick this Deponent several times about the Head and Body, so that the Blood gushed out of his Ears, which occasioned this Deponent the Loss of his Speech and Hearing for some Time, as to render him incapable of performing his Duty in the aforesaid Parish, he being Minister of the same. And this Deponent further saith, that he the said *D.* hath often declared, that it was no Crime for any Man to kill or destroy this Deponent.

A. B.

Sworn the 20th of October, 1732,
before me, *Raymond.*

Let

King's Bench.
The Judges
Order there-
upon.

Let a *Latitat* be issued forth against C. D. with an *Acetiam* of 20 l. at the Suit of A. B. upon this Affidavit.

Dated 20th of Octo-
ber, 1732.

Raymond.

Having made your Bills of *Middlesex* on a Piece of Parchment (but you may buy Blanks ready for filling up) you must also make a Note on Paper, which you are to carry with your Writ into the Office, where you get such Writ

The Note for signed in this Manner.
the Office.

G. B.
Middlesex ff. Bill for C. D. against A. B. for
20 l. returnable *Wednesday* next after three
Weeks of St. Michael.

Thornhill.

G. B. signi- If it require Bail, you must mark the Paper
fies good Bail. with a G over the Defendants Christian Name,
and a B over his Sirname, and a Stroke under
both, as you see above.

The Bill is to be signed at the Bill of *Middlesex* Office, and the Note and Affidavit of the Debt to be left there, for which Signing you pay in the Term Time Six Pence, and in the Vacation Ten Pence.

A Special
Warrant to
charge any
Person in Cus-
tody of an Of-
ficer or a
Warrant upon
an Original,
f. fa, &c. is
2 s. 4 d.

Upon this Bill you must have a Warrant at the Sheriff of *Middlesex* Office which costs Four Pence.

And if in *Westminster*, the Warrant from the High Bailiff costs Two Shillings Four Pence.

If the Defendant be not taken upon the first Bill, you may make an *Alias*; and if not up-
on

Bill of Middlesex.

31

on that, then a *Pluries* ; only saying, It is King's Bench, commanded the Sheriff, as ere while (or often before) it was commanded thee, that he may take, &c. for the signing of which Writ, you pay but Two Pence, if within a Year after the first or second Bill sued out, setting down the Time that the first Bill of *Middlesex* was made out.

You may save the Statute of Limitations, by suing out this Bill of *Middlesex* within six Years after the Debt, &c. contracted, and getting of it returned, *he is not to be found*, by the Sheriff, then enter it on a Roll, and file the Bill of *Middlesex* with the Signer of the Latitats, and carry the Rolls to the Clerk of the Docquets, who will enter it, and you afterwards file the Roll, as in common Cases.

The Entry of a Bill of Middlesex on the Roll, to save the Statute of Limitations, is thus.

Middlesex ff. **I**T is commanded the Sheriff, that he take A B, and E H, if they shall be found in his Bailiwick, and them safely keep, so that he may have their Bodies before the Lord the King at Westminster, on Wednesday next after three Weeks of Holy Trinity, to answer unto C D, of a Plea of Trespass, and also of a Bill of him C, against the aforesaid A, for Twenty Pounds, upon an Assumption, according to the Custom of the Court of him the Lord the King, before the King himself, to be exhibited, and have there then this Precept.

By Bill

Ventris.

At

King's Bench.

At which Day before the Lord the King at Westminster, came the aforesaid C, in his proper Person, and offered himself against the aforesaid A B, in the Plea aforesaid, and the Sheriff of Middlesex, to wit, D R. Knight, and T. H. Knight, returned that the aforesaid A is not to be found in his Bailiwick.

The Form of a LATITAT.

Stamp treble
s d.

GEORGE the Second by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. to the Sheriff of Somersfet, Greeting : *Whereas we had lately commanded our Sheriff of Middlesex, that he should take C D, and E F, if they should be found in his Bailiwick, and them safely keep, so that he might have their Bodies before us at Westminster, at a certain Day now past, to answer unto A B, of a Plea of Trespass, and * also to a Bill of him A, against the aforesaid C, for Ten Pounds of Debt, according to the Custom of our Court before us*

You may put four Defendants in one Writ, but if there be but one Defendant, and your Blank is made in the plural Number. you may put in John Doe or Richard Roe as Defendants, but take no Notice of them in the Note for the Office. If it be only in Trespass, you must leave out the And also ; otherwise you must put it in as before directed in a Bill of Middlesex.

to be exhibited, and our said Sheriff of Middlesex at that Day returned to us, that the aforesaid C and E were not to be found in his Bailiwick ; upon which, on the Behalf of the aforesaid A, in our Court before us, it is sufficiently attested, that the aforesaid C and E bide and ramble about in thy County ; Therefore we command thee, that thou take them, if they shall be found in thy Bailiwick, and

and them safely keep, so that thou have ^{King's Bench.} their Bodies before us at Westminster, on Wednesday next after three Weeks of St. Michael, ^{The Teste of this Writ may be made any} to answer to the aforesaid A, of the Plea and Day in Term Bill aforesaid, and have there then this Writ. ^{that is a Day in Court, but the usual way is, in Term} Witness Lord Raymond at Westminster the Twenty eighth Day of June, in the Sixth Year of our Reign.

Ventris. ^{make the Teste thereof, the first Day of}

Term, but if it be made in the Vacation, then make the Teste thereof the last Day of the precedent Term. 2 Salk. 700.

If it be against several Defendants, for several unequal Sums in Case and Debt, then it must be, And also to the Bill of him R, against the aforesaid John for 20 l. upon an Assumption, and against the aforesaid R for 30 l. of a Debt according to, &c. If against several Defendants in Case, you say, And also to the Bill of him N, against the aforesaid John for 20 l. upon an Assumption, and against the aforesaid K for 30 l. upon an Assumption, &c. But if two are severally bound in a Bond of 20 l. then the And also must be for 20 l. of a Debt severally and the same of a Note for 20 l. upon an Assumption severally.

You must make a Note in Paper in Secretary Hand for the Office, thus.

G B.

Somerfet ff. Latitat for A B, against C D, and ^{Precipe for the Office.}

^{G B.} E F, returnable on Wednesday next after three Weeks of St. Michael.

Norton.

Marking it as above, if the Cause require Bail.

- If it be for a *Quitam* (who as well for) upon a penal Statute, you say, To answer unto A B, who as well for us as for himself in this Behalf, follows of a Plea of *Trespas* (only).

D

Note,

King's Bench. • *Note, That upon a Quitam (who as well for) in the Common Pleas some Filazers insift for a Fine to be paid the Curfitors, but not in the King's Bench.*

And the Affidavit of a Debt.

The *Latitat* filled up, you carry it with the Note to the *King's Bench* Office in the *Temple*, where your *Latitat* must be signed, for which you pay 2 s. 6 d. and you must * leave the Note with the Signer.

Being signed, you carry it to the Seal-Office, and he who seals for the *King's Bench* will seal it, and stamp the Day on the Back, for which you pay 7 d.

The next Thing is to get a Warrant upon it from the Sheriff of the County.

The Entry of a Latitat on the Roll to prevent the Statutes of Limitations occurring.

England ff. **T**HE Lord the King hath sent to the Sheriff of Suffex his Writ closed in these Words, to wit, George the Second, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. to the Sheriff of Suffex, Greeting : Whereas our Sheriff of Middlesex, &c. and so on to, and have there then this Writ. Witness Lord Raymond, at Westminster the Twenty eight Day of June, in the Sixth Tear of our Reign. Ventris At which Day (the Return of the Writ) before the said Lord the King at Westminster, came the aforesaid A B, in his proper Person, and the Sheriff of the County of Suffex, to wit, J. M. Baronet, returned, that the aforesaid Elizabeth is not to

be found in his Bailiwick, and the same Eliza- King's Bench.
beth did not come. Therefore as it is ere
while commanded the Sheriff, that he should take
the aforesaid Elizabeth, if she were to be found
in his Bailiwick, and her safely keep, so that
he might have her Body before the said Lord
the King, at Westminster, on Wednesday next
after (the Return of the alias Latitat) to an-
swer to the aforesaid A of the Plea aforesaid,
the same Day is given to the aforesaid A there,
&c.

If the Defendant cannot be arrested upon
the Latitat, you may sue out an *alias Capias*;
and if not taken upon that, then a *Pluries*
Capias.

The Form of an Alias Capias.

GEORGE the Second, by the Grace of God;
of Great Britain, France and Ireland;
King, Defender of the Faith, &c. to the Sher-
riff of Somerset, Greeting: We command thee,
as we have ere while commanded thee, that
thou take C D, and E F, if they shall be
found in thy Bailiwick, and them safely keep,
so that thou have their Bodies before us at
Westminster, on Thursday next after three
Weeks of St. Michael, to answer to A B, of a
Plea of *Trespas*, and also to a Bill of him A,
against the aforesaid C and E, for Ten Pounds
of Debt, according to the Custom of our Court;
to be exhibited before us, and have there then
this Writ. Witness Lord Raymond at West-
minster, the 28th of June, in the Sixth Year
of our Reign.

Ventris

D 2

And

King's Bench.

And indorse the Name of the Attorney that
sues it out, and the Day of the Month.

The *Pluries Capias* is the same with the
alias only saying, *We command thee, as we*
have often times commanded thee, &c.

You must make a Note for the Office as for
the Latitat.

Somerset ff. *Alias* for A B, against C D, and
G. B.
E F, returnable on Wednesday next after
three Weeks of St. Michael.

Jobber.

You must insert on the Bottom of your
Precipe when the original *Latitat* issued out.

For signing
the *Alias* or
Pluries, no Fee
is paid.

The *Alias* and *Pluries Capias* must be sign-
ed at the King's Bench Office, for which you
pay no Fee or Duty.

After your *Alias* or *Pluries* are signed, you
get them sealed, as above, and pay Seven
Pence for each.

Note, You may continue your *Pluries Ca-
pias* from Term to Term, until the Defendant
be arrested; but observe, that if the *Latitat*
was not renewed within five Terms after it
was taken out, then you cannot renew it by
Alias or *Pluries*, but you must sue out a new
Latitat.

Note, When there are three or four De-
fendants in one Writ, and some of them spe-
cial, and some not, as if your Directions be
for a Bill or *Latitat* for A B, against C D, for
10 l. of Debt, E F in Trespass G H, for
17 l. 10 s. 8 d. upon Assumption, 7 K for
Conver-

Conversion and carrying away Goods and Chattels to the Damage of 100 l. then after the Words of a Plea of Trespass, you say, and also to the Bill of him A B, against the aforesaid C D, for 10 l. of Debt, and against the aforesaid G H, for 17 l. 10. s. 8 d. upon Assumption, and against the aforesaid J K, for Conversion and carrying away the Goods and Chattels of him A, to the Damage of 100 l. according to the Custom of our Court, to be exhibited before us, &c.

King's Bench.
In Debt.
Case.
Trove.

If two of the Sums be alike in Debt, or on Promise, as A B against C D and E F, for 40 l. in Debt, and G H in Trespass,

Then say, And also to the Bill of him A, against the aforesaid C D and E F, for 40 l. of Debt severally, according to, &c. or for 40 l. upon Assumption, &c.

In Covenant, say, In a Plea of Breach of Covenant to the Damage of him A B 30 l.

Note, If any of your Defendants live within a Liberty where the Sheriff may enter, you must get the Sheriff to direct his Warrant on your Writ to the Bailiff of such Liberty, who may execute it; but if the Bailiff of such Liberty do not execute it, then you must at the Return of your Writ, get the Sheriff to return a Mandavi Ballivo (I have sent to the Bailiff) thereon, and thereupon, you may make out a Writ called a Non Omitas, (that thou dost not omit) directed to the Sheriff, and upon that Writ the Sheriffs Officers may upon the Sheriff's Warrant made out thereon, enter and execute the Warrant within such Liberty.

Mandavi
Ballivo.

The usual Practice is, you sue out a Latitat or Bill of Middlesex into the County where the Liberty

King's Bench. berty is, and a *Non Omittas* at one and the same Time, but make the *Latitat* returnable before the *Teste* (or Date) of the *Non Omittas*, which must be tested the fourth Day inclusive of the Return of the *Latitat*.

The Form of the Non Omittas.

GEORGE, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c to the Sheriff of Somerset, Greeting : We command thee, that thou dost not omit, by Reason of any Liberty within thy County, but that thou enter it, and take C D, if he shall be found in thy Bailiwick, &c. as in an Alias Capias.

If you sign the *Non Omittas* at the same Time with the *Latitat*, you pay nothing for signing thereof, but only 2 s. 6 d. for the *Latitat*.

BAIL BOND.

WHEN the Sheriff arrests the Defendant, he by his Officers takes a Bail-Bond for the Defendant's Appearance at the Return of the Writ By the Act 12 Geo. I. cap. 29. the Sheriff shall take Bail for no more than the Sum endorsed on the Writ.

But if the Defendant is served with a Copy of the Process, the Action requires only a common Appearance, and then an Attorney may cause common Bail to be filed for the Defendant at the Return of the Writ ; or if the Defendant neglect to appear, or cause com-

common Bail to be filed, the Plaintiff on Assize King's Bench. fidavit being made and filed in Court of the personal Service of the Writ, may within four Days after the Return, enter a common Appearance, or file common Bail in the Defendants Name, and proceed thereon. The Form of a common Bail Peace you will find after.

But where the Defendant is arrested on any of the aforesaid Writs, and doth not appear, that is, doth not file Special Bail, as the Writ requires, then the Plaintiff's Attorney must call on the Sheriff for a Return of the Writ, that is, an Answer endorsed on the Back of the Writ, whether the Defendant be arrested or not. If the Sheriff make Delay, as it often happens, when the Bail-Bond is not brought into his Office, or when the Officer hath taken insolvent or insufficient Bail, or hath let the Defendant escape, then the Plaintiff's Attorney must give a Rule with the Clerk of the Rules for the Sheriff of the County, to return the Writ, and serve the Sheriff or his Deputy with a Copy. If the Sheriff doth not return the Writ at the Time mentioned in the Rule, the Plaintiff's Attorney may move at the Side-bar to have the Sheriff amerced, shewing the Rule wherewith he was served, and the Clerk of the Rules, who always attends there, will draw up the Side-bar Rule, and then you may estreat the Amerciament into the Crown Office, which costs Two Shillings a Piece; but the usual Course is to shew the Sheriff the Rule, and tell him you will estreat the Amerciaments, if he doth not return the Writ: If he doth still delay you, you may summon him before a

D 4

Judge.

King's Bench. Judge, to shew Cause, or at last move the Court against him.

When you have a *Cepi Corpus* returned, if there be no Appearance or Bail, you may have a Rule to bring in the Body, if you do not like the Bail which the Sheriff has taken, and amerce him the first Time 40 s. and moving at the Side-bar double the Amerciaments from Time to Time, till you have enough to answer the Debt, which you may also estreat; The Rule to be drawn up with the Clerk of the Rules will cost each Time Three Shillings, which must be served on the Sheriff, or his Deputy from Time to Time, or you may, upon the Sheriff's not returning the Writ upon the first Rule, upon Affidavit of Service of such Rule, move for a peremptory Rule for him to return the Writ at a certain Day; which, if he disobeys, the Court upon Affidavit of Service, will grant a Rule for him to shew Cause why an Attachment should not issue against him, which seems to be the most speedy way of proceeding; if the Defendant doth not yet put in Bail, you may have a *Habeas Corpus* on the *Cepi* (which see after) or you may proceed by Amerciaments as before, and so you may, if the Sheriff do not return the *Habeas Corpus*: But generally the Sheriff having taken good Bail (upon a Rule given on the *Cepi* when the Rule is out) will assign you the Bail Bond, and many times upon Request without a Rule, ' And then you ' may arrest the Defendant and the Bail, at ' the Suit of the Sheriff on that Bond, but you ' must not put an *And also to the Bill*, in the ' Writ, tho' the Penalty of the Sheriff's Bond ' be

This Practice is altered by a Statute of Anne. See after.

' be never so great; for there is no Bail re- King's Bench.
' quired at the Sheriff's Suit; you must also
' observe that if the same Sheriff be still in his
' Office, your Writ must be directed to the
' Coroners of the County, and they must grant *Coroners.*
' you a Warrant on the Writ for which they
' will take 2 s. 4 d. a Name, and so ought
' your *Venire Fac.* to be to the Coroners;
' But if a new Sheriff be sworn, then you may
' make your Writ to the new Sheriff, and
' proceed as in other Cases.

But this Practice is altered by the *Stat. 4,*
and *5. Anne, Sect. 21.* for the Amendment
of the Law, whereby it is enacted, That if
any Person or Persons shall be arrested by any
Writ or Process issuing out of any of her
Majesty's Court of Records at *Westminster*, at
the Suit of any common Person, and the She-
riff or other Officer taketh Bail from such Per-
son against whom such Writ, Bill or Process
is taken out, the Sheriff or other Officer, at the
Requests and Costs of the Plaintiff in such Ac-
tion or Suit, or his lawful Attorney, shall as-
sign to the Plaintiff in such Action the Bail-
Bond, or other Security taken from such Bail,
by indorsing the same, and attesting it under
his Hand and Seal, in the Presence of two or
more credible Witnesses, which may be done
without any Stamp, provided the Assignment
so indorsed be duly stamp'd before any Ac-
tion be brought thereupon, or other Security
taken for Bail be forfeited; the Plaintiff in
such Action, after such Assignment made, may
bring an Action and Suit thereupon in his own
Name, and the Court where the Action is
brought, may, by Rule, or Rules of the same
Court,

*Bail Bond
assigned to
Plaintiff or his
Attorney.*

*The Stamp
is double 6 d.*

*May bring
Action on the
Bond.*

King's Bench.
And the
Court by Rule
gives the
Plaintiff Sa-
tisfaction.

Such Rule
to be a De-
feazance.

Court, give such Relief to the Plaintiff and Defendant in the original Action, and to the Bail upon the said Bond, or other Security taken from such Bail, as is agreeable to Justice and Reason ; and that such Rule or Rules of the said Court, shall have the Nature and Effect of a Defeazance to such Bail Bond or other Security for Bail.

But since the Act of 12 George, the Bail are not to be arrested on the Assignment of the Bail Bond, but you make a Copy of the Writ on the Bail Bond, and personally serve the Defendant and his Bail.

The former Act also provides, That the Attorney for the Plaintiff or Demandant in any Action or Suit, shall file his Warrant of Attorney with the proper Officer of the Court where the Cause is depending, the same Term he declares ; and the Attorney for the Defendant or Tenant, shall file his Warrant of Attorney as aforesaid, the same Term he appears, under the Penalty inflicted on Attornies by any former Law, for Default of filing the Warrants of Attorney.

If you are
for the Defen-
dant, put in
Bail above,
and give No-
tice you will
move the Court
to tax the Costs
on the Bail
Bond, &c.

* You need
not alledge in
the Notice.

If you are for the Defendant in the Action, then the best Course to stay Proceedings on the Bail Bond, is first to put in Special Bail, and then give Notice that you will move the Court, that the Secondary may tax the Costs on the Bail Bond, and * alledge that you are ready to receive a Declaration in the original Action, and to plead and try it that Term, and not to delay the Plaintiff. Upon such Notice, and a Motion to the like Purpose, the Court will make a Rule ; draw up that Rule, and carry it to the Secondary, and he will ap-
point

point a Day when both the Attornies shall at-^{King's Bench.} tend him, and the Plaintiff's Attorney being served with the Rule and Appointment, brings in the Bill of Costs, which the Secondary taxes, and the Defendant must forthwith pay and receive the Declaration.

Many Times the Attornies agree these Things amongst themselves without troubling the Court.

If the Attorney for the Plaintiff will not agree, you may summon him before one of the Judges of the Court, who will make an Order to the same Purpose at his Chambers, provided you apply in Time ; that is, before the Plaintiff has lost the Advantage of a Trial, or obtaining Judgment against the Principal, and putting the Plaintiff in as good a Condition as if the Bail Bond had not been assigned.

If the Action be in *London* or *Middlesex*, andailable, you must within four Days after the Return of the Writ, (exclusive of the Appearance Day) put in Bail above, or the Bail Bond may be assigned.

If the Defendant is arrested in any Action within the Distance of Forty Miles from *London*, and no Bail is put in above, or Bail Piece transmitted within eight Days after the Return of the Writ to one of the Judges, the Bail Bond may be assigned ; but in case it be above Forty Miles Distance from *London*, Bail must be put in above, or the Bail Piece transmitted within fifteen Days after the Return of the Writ, otherwise the Bail Bond may be assigned.

When you have put in Special Bail, you must give Notice to the Plaintiff's Attorney,
the

King's Bench. the Names, Places of Abode, and Additions of Trade or Vocations, that the Plaintiff may know how to enquire after them.

Exception. Twenty Days are allowed to except against Bail after Notice; and you should add or justify in eight Days after such Exception.

Bail cannot be justified before a Judge at his Chambers, except by Consent, or for Necessity in the Vacation; and in the latter Case it ought to be justified again in Court in Term.

If the Plaintiff excepts against the Bail, you must desire the Judges Clerk before whom the Bail was taken, to bring up the Bail Piece to Court, for which you pay him 2 s. 6 d. and then justify your Bail in Court; but you must give the Defendants Attorney Notice of such Justification, and an Affidavit must be made of the Service thereof; and if the Defendant is not in Court, the Bail must each swear they are worth double the Sum the Action is for.

If the Defendant appears in Person, must declare three Days, by Stat. 8. Eliz. cap. 2.

Sometimes a catching Practiser will bring the Defendant in Person into Court, and then he appears in Person, and so it is mentioned on the Bail Piece; and therefore it is fit when you have Notice of Bail to be given in Court, that you do attend: For then if the Defendant doth appear in Person, the Secondary who takes the Bail will give you Notice, if you be present, and you must declare within three Days, or else may be non-pross'd with Costs.

But here *Note*, That if the Defendant be held to Special Bail, and that he doth not really owe the Plaintiff 10 l. the Defendant may have a Summons from any of the Judges of the Court of *King's Bench*, for the Plaintiff to attend the Judge, to shew his Cause of Action;

Action; then the Defendant's Attorney must ^{King's Bench.} make a Copy of the Summons, and deliver it to the Plaintiff's Attorney, shewing him the Original at the same Time, and the Defendant's Attorney must attend the Judge at the Time limited in the Summons; and if the Plaintiff doth not make Oath, or prove that the Defendant owes him 10 l. the Judge will order the Defendant to file common Bail, and all Proceedings on the Bail Bond to stay, and the Defendant's Attorney must file a common Bail Piece. If the Plaintiff doth expressly make Oath there is 10 l. due to him, the Defendant will not be admitted to make Affidavit to the contrary; but if the Plaintiff's Attorney do not appear on the first Summons, the Defendant must take out a second, a third, and serve them, and attend; and it is often of great Consequence to the Defendant not to be held to Bail.

*The Form of a Habeas Corpus upon a
Cepi.*

GEORGE, by the Grace of God, &c. to the Sheriff of Northampton, Greeting: We command thee, that the Body of A B, detained in our Prison, under thy Custody, as thou thy self hast charged thy self, by thy Return thereof, ere while sent into our Court before us, thou have before us at Westminster (such a Day) to answer to C D, of a Plea of Trespass, and also to the Bill of him C, against the aforesaid A, for One Hundred Pounds of Debt, according to the Custom of our Court, to be exhibited before us, and have there then this
Writ.

King's Bench. *Writ. Witness Lord Raymond, at Westminster, 28th Day of June, in the Sixth Year of our Reign.*

Sometimes the Sheriff will Return *Languidus in Prisona*, (he Languishes in Prison,) whereupon you may have an *Habeas Corpus licet Languidus detent*. (Have the Body tho' he be detain'd Languishing.

The Form whereof is as follows.

GEORGE the Second, by the Grace of God, &c. to the Sheriff of Northampton, Greeting: We Command thee that the Body of A. B. by thee taken, and in our Prison under thy Custody, tho' he be detain'd Languishing, as manifestly appears to us by thy Return sent in our Court before us, thou have before us at Westminster (such a Day) to Answer to C. D. (as before) and have there then this Writ, &c.

Note, at the Return of all or any of these, you may Amerce the Sheriff, as before observed.

In what Cases Special Bail is required.

NOTE, In the Court of King's-Bench, if the Defendant be Indebted to the Plaintiff, by Bill, Bond or otherwise, to the Value of 10*l.* or upwards; you may force him to put in special Bail, as the Act 12. G. directs.

But in Case for Words, Ejectment and Trespass, Bail is not insisted on, except in some special Cases, and if the Court so order.

Neither

Neither is special Bail requir'd, against King's Bench, Heirs, Executors or Administrators, in any Action brought against them; unless in such Case where they have wasted the Goods of the Testator.

By the Rules of this Court, Special Bail is required in all Causes of Removal, be it by *Habeas Corpus*, *Writ of Priviledge*, *Certiorari* or the like, except where the Defendant is sued as Executor or Administrator; for then he is to give special Bail upon the Removal. *Note*, the Defendant is not obliged to give the Plaintiffs Attorney Notice of Bail being put in on the *Habeas Corpus*, and if the Plaintiff does not take out a Rule for better Bail in 28 Days time, the Bail must stand.

Of COMMON BAIL.

IF the Defendant be served with a Copy of the Process, he must appear at the Return, and the manner of Appearance in the *King's Bench* is by Bail, which is either Common or Special, as the Case requires; and it is to be written on Parchment, and filed in the Office if Common, and before a Judge, if Special, as is before observed: Which Appearance or Common Bail, by the *Stat. 5 and 6 William III. Cap. 21* and *9 W. III. Cap. 25.* the Defendant was to enter or file within eight Days after the Return of the Process; on which the Defendant was arrested on Penalty of 5*l.* to be paid to the Plaintiff, for which the Court could immediately award Judgment, and the Plaintiff might take out Execution.

But

King's Bench. But now by the *Statute* 12 Geo. I. if the Defendant is served with a Copy of the Process, and does not appear within four Days after the Return thereof; the Plaintiff on Affidavit being made of such Service, and filed in Court with the Clerk of the Rules, may file Common Bail for the Defendant, and proceed thereon as if such Defendant had filed Common Bail himself.

The Bail Piece is usually cut out in the Shape and Proportion as follows.

*A Common Bail Piece upon Cepi Corpus
or Appearance.*

The Term
the Writ is
returnable of.

Note, Stamp
double 6 d.

Note, these
Writs, Notes
and Bail
Pieces must be
on Parchment,
in Secretary
Hand.

Of the Term of *St. Michael*, in the Sixth
Year of the Reign of King *George* the
Second.

Middlesex ss.

Robert Manlove
Attorney for the
Defendant.

A B, of the Parish of
*St. Martin in the
Fields*, in the County a-
foresaid, Gentleman.

is deliver'd in Bail upon a
Cepi Corpus, unto *John
Doe*, of *London*, Yeoman,
and *Richard Roe*, of the
Same, Yeoman.

At the Suit of *C. D.*

The

*The Special Bail Piece before a Judge,
is made thus upon a Cepi Corpus.*

Of the Term, &c.

Somerfet ss.

A B, C, in the County
aforesaid, Gent.

John Check-
ley Attorney
for the De-
fendant.

is delivered in Bail upon a
Cepi Corpus unto D E, of &c.
(naming the Persons that are
Bail, their Additions and Place
of Abode)

At the Suit of
G. H.

*This Bail
by Rule of
Court ought to
be filed (that
is) taken from
the Judges
Chambers,
and left with
the Signer of
the Latitats
within twenty
Days, if the
Plaintiff ac-
cepts it.*

*No Bail to
be put in for a
greater Sum
than in the
Process.*

*Note, Double
12 d. Stamp.*

E

The

Thus upon a Habeas Corpus before a Judge.

By Rule of Court 28 Days Time is allowed for Exception.

Note, Stamp double 12 d.

No Executors or Administrators, on Habeas Corpus, shall put in Bail, but that in all other Actions Bail shall be put in, Scandalous Words and little Injuncts excepted by Rule of Court.

The Term of &c.

Somerset ff.

A B, of, &c.

is delivered in Bail, upon a Habeas Corpus unto C D, of &c.

*John Check-
lev the Plain-
tiff's Attorney.*

At the Suit of the Plaintiff in the Plaint.

Note, It is enacted Stat. 4. W. and M. c 4. That Bail may be taken in the Country before a Special Commissioner for that Purpose, authorised by the Judges of the King's Bench, Common Pleas, and Barons of the Exchequer respectively.

In

In the King's Bench there are Orders put forth by the Judges for that Purpose, which are as follow.

ORDERS to be observed by Commissioners for taking Special Bail in the Country, upon Actions and Suits depending, or to be depending in His Majesty's Court of King's Bench.

First, **I**T is ordered, That the Bail Piece shall be fairly drawn and ingrossed in Parchment, in the Form following, viz. *Orders for Bail before the Commissioners;*

Middlesex ss. **J**ohn Doe of Islington, in the County aforesaid, Gent. is delivered in Bail upon a Capi Corpus to John Doe of Hackney, in the County aforesaid, Gentleman, and Richard Fen of Highgate, in the County aforesaid, Gentleman.

A. B. Attorney
for the Plaintiff.

Taken and acknowledged, the
24th Day of
August 1732,
before A B, one
of the Commissioners,
&c.

At the Suit of
Richard Roe.

And taking of the Recognizances these Words must be used (viz.) to wit,

You (calling the Bail by their Names) do jointly and severally undertake, That if the Defendant (naming his Name) shall be condemned in this Action at the Suit of the

Words to be used.

King's Bench. Plaintiff (naming his Name) he shall satisfy the Costs and Condemnation, or render himself into the Custody of the *Marshalsea* of the Court of *King's Bench*, or you will pay the Costs and Condemnation for him.

And if any Bail be given upon any Action or Actions, removed out of any inferior Court by Writ of *Habeas Corpus*, and returnable in the Court of *King's Bench*; then instead of writing *Super Cepi Corpus*, as before, you must write *Super breve de Habeas Corpus* (upon the Writ of *Habeas Corpus*; and instead of writing the Plaintiff's Name (as aforesaid) you must write, *At the Suit of the Plaintiff in the Plaint*; and the Cognizers must undertake, that if the Defendant be condemned at the Suit of the Plaintiff or Plaintiffs in the Plaint, that he shall satisfy the Costs and Condemnation, or render his Body, &c. as aforesaid.

Affidavit to
be made.

Secondly, It is ordered, That the Affidavit for the due taking of every such Bail, shall be made either before some Judge of the *King's Bench*, to whom the Bail shall be transmitted, or before some Person who shall have Power to take Affidavits in Matters and Causes depending in the said Court.

Thirdly, It is ordered, That all Bails taken by any Commissioner within the Distance of Forty Miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of the Court of *King's Bench*, or to one of the Justices of the said Court, within eight Days after the taking thereof, and all Bails taken by any Commissioner above the Distance of Forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted

Bails to be
transmitted in
eight Days, if
within Forty
Miles in fif-
teen, if above
Forty.

mitted within fifteen Days after the taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any one of them shall be returned to his Chambers in one of the *Serjeant's Inns*. King's Bench.

Fourthly, Also every Commissioner is to have a Book kept purposely for entering the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail Piece, and the Time of taking thereof, and the Name of him by whom such Bail shall be transmitted; and also the Name of the Attorney for the Defendant. And, Books to be kept.

Fifthly, It is further ordered, That the Plaintiff's Attorney shall be at Liberty to repair to the Commissioner's Book for the Names of the Bail, to the End that they may enquire of the Sufficiency of them, and if they are found insufficient, they may except against them Twenty Days after the said Bail is transmitted, and Notice to the Plaintiff or his Attorney of the taking thereof; and in that case, the Defendant must either put in better Bail, or the Cognizers of such Bails must justify themselves in open Court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court. Plaintiff to except against the Bail in 20 Days.

G. Eyre. W. Dolbin. J. Holt.

Three Sorts of Bail Pieces taken before Commissioners, are as follows.

Of Bail.

The First Bail Piece upon Cepi Corpus.

Berks ff.

A B, of R, in the County
aforesaid, Gent.John Johnston
Attorney for the
Defendant.is delivered to Bail upon a Cepi
Corpus unto C D, of . . .
Gentleman, and E F, of . . .
Gent.At the Suit of
D. R.Stamp double
12 d.Taken and ac-
knowleged, 24th
Day of August,
1732, (to be
upon liking)
before me of J. S.
one of the Commis-
sioners.

The

The Second Bail Piece upon a Habeas Corpus.

Berks ff.

A B, of R, in the County
aforesaid, Gent.

John Shaw At
torney for the
Defendant.

is delivered to Bail upon a Writ
of Habeas Corpus unto C D,
of in the County of . . .
Gent. and E F of in the
County aforesaid, Gent.

Taken and ac-
knowleged the
28th Day of
June, in the
Year of our
Lord, 1732,
(to be upon liking)
before me J. S.
one of the Commis-
sioners.

*At the Suit of the Plaintiff
in the Plaint.*

The Third Sort is upon a Certiorari, thus.

Berks ss.

A B, of R, in the County
aforesaid, Gent.

William Web,
Attorney for the
Defendant.

*is delivered to Bail upon a Writ
of Certiorari, unto C D, of . . .
in the County aforesaid, Gent.
and E F, of . . . in the Coun-
ty aforesaid, Gentleman.*

*Taken and acknow-
ledged the 24th Day
of June, in the Year of
our Lord 1732, before
me J. B. one of the
Commissioners.*

*At the Suit of the Plaintiff
in the Plaint.*

Double 12 d.
Stamp.

The three last Bail Pieces must be carried to be filed at the Judges Chamber with an Affidavit of the due taking to be made by one that was present.

The

The Form whereof follows.

In Banco Regis.

Between D R Plain-
tiff, and A B De-
fendant.

T B, of D, in the County of E, Gentleman,
maketh Oath, That the Recognizance of
Bail or Bail Piece hereto annexed was duly
acknowledged by . . . naming the Bail) be-
fore J. S. Esq; the Commissioner who took the
same in this Deponents Presence the 24th Day
of June last past.

Sworn the 24th Day of August
1732, before

T. B.

This Affidavit may be sworn before the
Commissioner, and sent up, or if the Party
be above at Term, then before a Judge of
that Court.

Of Delivering Declarations.

IF the Plaintiff's Attorney does not deliver a
Declaration to the Defendant or his Attor-
ney, either the Term the Writ is returnable
of, or some time in the succeeding Term, the
Action is discharged, and the Plaintiff may be
non-pros'd; for the Defendant is not obliged
afterwards to accept of a Declaration.

And observe, that by a Rule of Court, the
Defendant's Attorney is to pay the Plaintiff's
Attorney for a Copy of the Declaration when
delivered, at 4 d. per Sheet.

A

King's Bench.

A Declaration may be delivered *de bene esse* (to be well hereafter) till Bail above is put in and justified.

Note, That in case you cannot find the Defendant's Attorney to deliver him the Declaration (or if he refuses to pay for it) you may leave it in the Office with the Clerk of the Declarations, and proceed thereon against the Defendant, but you must give the Defendant's

* If you cannot find the Attorney, give the Defendant Notice.

* Attorney Notice of the Declaration, and the Proceedings so soon as you can find him.

If a Declaration be delivered after the Effoin Day of *Michaelmas* Term, and before the *Morrow of All-Souls*, or after the Effoin Day of *Easter* Term, and before *one Month* of *Easter*, and Rules are given to plead, the Defendant must plead to enter, that is, must plead, two Days before the Effoin Day of the succeeding Term.

But if a Declaration is delivered against a Prisoner in the *King's Bench*, he is obliged to plead as soon as the Rules are out.

See the Rules for delivering Declarations, and declaring against Prisoners at the End of the Declarations.

If Bail be put in upon *Habeas Corpus* returnable *immediately*; if it be in *Hilary* or *Trinity* Term, and the Declaration be delivered eight Days before the End of the Term, then the Defendant must plead to enter.

But if it be in *Michaelmas* Term, and the Declaration be delivered before the *Morrow of All-Souls* or in *Easter* Term, before *one Month* of *Easter*, then the Defendant must plead to try the same Term.

If one come in upon *Habeas Corpus*, and King's Bench. Bail be given thereon, and the Plaintiff does not declare against him in two Terms, including the Term he was brought in, the Action and the Bail are discharged, and the Plaintiff non-pros'd with Costs.

Next, We will see how to make up Issues, because it doth sooner happen to a young Clerk than other Business.

For we will suppose that your young Clerk shall be little employed in drawing Declarations, except upon Bond, or in Ejectment, and the like, of which there are some Precedents after in this Treatise. *See Declarations towards the End of King's Bench.*

But he may have much to do in making up issues, ingrossing Records, and the like, and therefore we will hasten to them.

Of Memorandums and Issues.

SUPPOSE you have an Issue to make up in *Hillary* Term from a Declaration in *Michaelmas* (or some other Proceeding Term) you write in plain Secretary Hand at the Top of your first Sheet of Paper, thus, according to the Term.

Of the Term of St. Hillary, in the Sixth Year of the Reign of the Lord George the Second, now King of Great Britain, &c.

Somerſet ff. **I***T is to be remembred, That ere while, to wit, of the Term of St. Michael (Holy Trinity, Easter,*

King's Bench. *Easter, &c.* (as the Declaration is of) *last past before the Lord the King at Westminster, came A B, (naming the Plaintiff in the Declaration) by C D, (naming the Plaintiff's Attorney) his Attorney, and brought here into the Court of the said Lord the King, then there his certain Bill against E F, (naming the Defendant) if an otherwise called insert it, in Custody of the Marshal of a Plea of Debt, Trespass, Trespass and Assault, Trespass on the Case, Breach of Covenant, &c. as the Case is, and there are Pledges of prosecuting, to wit, John Doe and Richard Roe, which said Bill follows in these Words.*

Memorandum of another Term.

Somerſet ſſ.

A B, complains of E F, in Custody of the Marshal of the Marshalsea, of the Lord the King, before the King himself, being of a Plea that he render to him, &c. (Word for Word to the End of the Declaration) *and therefore he brings Suit, &c.*

Note, When your Declaration is of a Plea, that he render, then say in your Memorandum, It is to be remembred, or Issue of a Plea of Debt, when for that, to wit, then say, Of a Plea of Trespass upon the Case; when in Trespass say, Of a Plea of Trespass; when in Ejectment say, Of a Plea of Trespass and Ejectment; when in Covenant say, Of a Plea of Breach of Covenant; when in Assault and Battery say, Of a Plea of Trespass and Assault, &c.

Then beginning a new Line after the
End

End of your Declaration, you must enter your King's Bench. Imparlance, thus.

*And now at this Day, to wit, Tuesday next after the Octaves (that is) the eight Day of St. Hillary (the Imparlance, first Day of the Term the Issue is entered) in that same Term, until which Day the aforesaid E F (the Defendant) had Leave (or Licence) of imparling to the Bill aforesaid, and then to answer, &c. before the Lord the King at Westminster, came as well the aforesaid A B, by his Attorney aforesaid, as the aforesaid E F, by G H (the Defendant's Attorney) his Attorney, and the same E F defends the Force and Injury, when and where, and as the Court shall think fit; and says, That he doth not owe the aforesaid A B the aforesaid Ten Pounds (the Sum mentioned in the Declaration, nor any Penny thereof in Manner and Form, so as the same A B, above against him complains, and of this puts himself upon the Country; and the aforesaid A B likewise, &c. therefore let a Jury come thereupon before the Lord the King at Westminster, on Monday next after the Octaves (the eight Day) of the Purification of the Blessed Virgin Mary (the last Day of the same Term the Issue is made * up) and who neither, &c.*

But if the Declaration was delivered of Michaelmas Term, the Plea of Hillary Term, and you do not deliver the Issue before Trinity Term. then you make it an Issue of Trinity Term, and say, And now at this Day, to wit, the first Day of Trinity Term. and so on.

Note, If the Defendant's Attorney cannot be found, you may enter your general Pleas in a Book in the Office, which runs alphabetically, beginning with the Defendant's Name, thus,

B at the Suit of A, he hath not undertaken (or assumed) By Ross. (You pay 2 d. for it.)

Or thus.

A at the Suit of B. The abovesaid Writing obligatory is not his Deed. By Brown. (And so of the like.)

If in London or Middlesex, it must be some small Time before the Trial, but the Clerk of the Nisi prius, will insert the Day at the examining of the Record.

to

King's Bench. to take Knowledge, &c. because as well, &c. the same Day is given to the Parties aforesaid there, &c.

Not guilty in Trespass. Note, If the Defendant pleads not guilty in Trespass, then after the Words, *Defends the Force and Injury, when and where, and as the Court shall think fit*; write, *And says that he is not thereof guilty*; and of this puts himself upon the Country, &c. as above.

In Case. And says, *That he in no wise is guilty of the Premises above laid to him, so as the aforesaid A above against him complains*; and of this puts himself upon the Country, &c. (as before.)

He hath not assumed. If the Defendant pleads, he hath not assumed (or undertaken,) then after the Words *when and where, and as the Court shall think fit*; And he says that he hath not assumed upon himself in manner and forme, so as the same A. B. above against him complains, and of this puts himself upon the Country, &c. as above.

It is not his Deed. to a Bond. When and where, and as the Court shall think fit; And says that with the Debt aforesaid, by Virtue of the Writing obligatory aforesaid he ought not to be charged, because he says that the Writing obligatory aforesaid is not his Deed, and of this puts himself upon the Country, and the aforesaid A. likewise therefore, (&c. as in others.) Thus is your Issue made

up with a Memorandum, (Its to be Remembered) when the Declaration is of another Term.

But many Times the Issue is joyned the same Term the Declaration is of, and then you must enter it thus.

Somerfet

Somerset, ff. **I** *It is to be remember'd, that on King's Bench. Monday next after, the Oc- Its to be re-
taves of St. Hillary, (the first Day of that membered of
Term the Declaration is of,) that same Term the same
before the Lord the King at Westminster came Term.
(the Plaintiff) by A. B. his Attorney, and
brought here into the Court of the said Lord the
King then there, his certain Bill against (the
Defendant,) in Custody of a Marshall, &c. of
a Plea, &c. as in the foregoing. It is to be
remember'd of another Term.*

This is the usual Way, but it seems more proper to say after his Attorney, and he brings here into the Court of the said Lord the King now here, his certain Bill, &c.

Note, If the Declaration be above four Terms standing, then you say, It is to be remember'd, that otherwise heretofore to wit of the Term, (&c.) in the sixth Tear of the Reign of the Lord the King, now (naming the Term and Year) before, &c.

Note, Then it is to be remember'd, the same Term with the Declaration hath no Imparlance, but after the Declaration you must enter the Plea thus, (beginning a new Line.) And the aforesaid (Defendant) by A. B. his Attorney, comes and defends the force and Injury, when and where, and as the Court shall think fit. And says that he did not assumed — and so on, as it in another which hath no Imparlance.

You should enter your Issue before you Seal your Record, however before the next Term; (if your Trial be after the Term, or at the Assizes, it is enter'd upon a Roll out of the

King's Bench. the Office.) See Instructions to enter up Judgments, (See after to give a Rule to enter the Issue.

Record.

Having made up your Issue, the next Thing is to ingross it as a Record for a Trial, which is to be done in a press, or presses of Parliament, given out from the *Nisi Prius* Office for that purpose.

Double half Crown Stamp each Press.

Note, You must write but on one Side of the Press, and if one Press will not serve, you must take another, beginning near the Top, only leaving a Bit to sew it to the other.

Pleas.

Rule your Parchment near the Top, and make a Margent of about three Parts of an Inch, and then on the first, second or third upper Lines in large Hand, thus

**The first Pleas must be the same Term as the Issue is of.*

*Pleas before the Lord the King at Westminster, of the *Term of the Holy Trinity, in the Sixth Year of the Reign of the Lord George the Second, King of Great-Britain, &c.*

Then thus in small Hand.

*If the Defendant be in the County of Somerset, ff. Prison, say in Custody of the Sheriff of the County of D. being by Ver. his Attorney, and brought here into the Court of the said Lord the King then there, his certain Bill against E. F. * and so on to the End of your*

*Somerfet, ff. I T is to be remembered, that otherwise heretofore to Wit, of the Term of Easter last past, before the Lord the King at Westminster, came A. B. by C. D. his Attorney, and brought here into the Court of the said Lord the King then there, his certain Bill against E. F. * and so on to the End of your*

ing out of the Court of him the Lord the King, before the King himself, at Westminster, in the County of Middlesex, issuing of a Plea, &c. both in the it is to be remembered, or Issue and Declaration, the same in Judgment by he said nothing, &c. (See after.)

your Issue Word by Word; and after that, leaving King's Bench about Half an Inch Distance, you must write another Plea, in large Hand as above, to wit.

*Pleas before the Lord the King at Westminster, of the * Term of the Holy Trinity, in the Sixth Year of the Reign of the Lord George the Second, now King of Great Britain, &c.* * The same Term as the Cause is to be tried.

And then beginning a new Line, Enter a *Jurata* as follows in small Hand.

Somerſet, to wit, **T**H E *Jury* between A. B. by his *Jurata* in Somerſet. Attorney, Plaintiff, and E. F. of a Plea of *Treſpaſs*, (as the Action is,) *reſpited* before the Lord the King at Westminster, until ——— But if by Original, until (the first Day of next Term,) next after ——— unless from the Day of Easter, in the Justices of the Lord the King, at the Assizes in fifteen Days. the County aforesaid, assigned to be held before ——— Whereſoever, (the Day the Assizes are held,) by Form of the Statute, &c. and so forth, came for Default of *Jury*, and so forth. Wednesday the Therefore let the Sheriff have the Bodies, and so forth. fourteenth Day The same Day is given to the Parties aforesaid there, of March, at C. and so forth. And it is known that the Writ of the aforeſaid. said Lord the King, thereof — Day, (the Day of if by Original, the Return of the *Venire*, being the *Teſte* of the *Di-* in eight Days stringas, and last Day of that Term the Record is of the Holy made,) in the same Term, before the Lord the King Trinity. at Westminster, was delivered of Record to the Deputy of the Sheriff of the County aforesaid, in Form of Law to be executed.

Entry of a Writ delivered to the Sheriff's Deputy in Court. (Vide Dalt. Shcr. fol. 456.)

BE it remembred, That the Justices of the Lord the King here (such a Day,) in the same Term, have delivered to J. D. Deputy to the Sheriff of the County aforesaid, a certain Writ of the Lord the King, now closed, directed to the same Sheriff, in Form of Law to be executed; which said Writ, the

F same

King's Bench. same Deputy here in Court hath opened. The Tenor of which said Writ follows in these Words: *George the Second, and so forth.*

Thus is your Record ready for Sealing, and you may cut off the remaining Parchment within an Inch from the last Line.

But Note, If your Cause is to be tried in *London*, your *Jurata* must be after this manner.

Jurata in Lon- London, to wit, **T**HE *Jury between A. B. by his*
don. *Attorney, Plaintiff, and E. F. of*

a Plea of Trespass, (as the Action is,) is put in Re-
spect before the Lord the King, at Westminster, until
Wednesday, (the very next Day after the Sittings, if
in Term; if after Term, then until the first Day
of the next Term, as Wednesday next after three
Weeks of St. Michael,) unless the chosen and faithful
of the Lord the King, Robert, Lord Raymond, Chief
Justice of the Lord the King, assigned to hold Pleas
in the Court of him the Lord the King, before the
King himself; (if in Term, say,) shall before on
Friday next, after — (if after Term, say,) first on
Saturday, (the Day of Sittings,) on Thursday the
thirteenth Day of June, at Guildhall, London, by
Form of the Statute, and so forth, come for want of
Jurors, and so forth. Therefore let the Sheriffs have
the Bodies, and so forth. The same Day is given to
the Parties aforesaid, there, and so forth, (to appear.)

Note, The *Sciendum est*, (and it is to be known) that the Writ, and so forth, it is not used for *London* as for the County.

See after for some Special *Jurata*'s, at the End of the Issue in the *King's Bench*.

Jurata, Venire, Distringas.

Jurata in Mid- IF your Action be in *Middlesex*, then say, unless the
dlesex. *chosen and faithful of the Lord the King, Robert*
Lord Raymond, and so forth, at Westminster afore-
said, in the County of Middlesex, in the Great Hall
of Pleas there, by Form of the Statute, and so forth,
(as before.)

In

In order to a Trial to be had upon this Issue and Record, you must also make out a *Venire Facias*, the Form whereof is this.

GEORGE the Second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth. To the Sheriff of Somerset, Greeting: We command thee, that thou cause to come before us at Westminster, on Wednesday next after three Weeks of the Holy Trinity; (the last Day of the Term the Issue is made up,) Twelve free and lawful Men of the Body of thy County (by a late Act of Parliament,) each of whom may have Ten Pounds of Lands, Tenements, or Rents by the Year at least, by whom the Truth of the Matter might be better known; and who neither A. B. the Plaintiff, nor C. D. in any Affinity appertain to, make a certain Jury of the Country, between the Parties aforesaid, of a Plea of Trespass, (as the Action is,) because as well the same C. D. (the Defendant,) as the aforesaid A. B. (the Plaintiff,) be tween whom thereof the Contention is, have put themselves on this Account on that Jury, (and have there then the Names of that Jury, and this Writ.) Witness Robert Lord Raymond at Westminster, the 28th Day of June, in the Sixth Year of our Reign.

Ventris.

This Form was settled by 35 Hen. VIII. c. 26. and by 4 and 5 William, c. 24. each Juror to have 10 l. per Annum, and a Tales 5 l. per Annum.

Note, That by the Rules of the Court, if the Plaintiff will not try his Issue after it is joined, in such Time as he ought by the Course of the Court; in such Case the Defendant may make out the *Venire* by *Proviso*, if he will, that he may free himself if he can, of the Danger and Trouble he may be subject to, by the depending of the Action against him, and to recover his Costs for his unjust Vexation; in which Case the *Venire* is to run thus; after you come to, on that Jury, say, *Provided always, that if*

King's Bench. *two Writs thereof should come to thee, one of them only*
 Proviso. *return and execute, and have, and so forth.*
See after.

And it is to be observed, That in Actions laid in *London* or *Middlesex*, the Defendant ought not to give the Plaintiff a Rule to Enter his Issues, or to try the Cause by *Proviso*, the same Term Issue is joined, unless the Plaintiff hath first given the Defendant Notice of a Trial that Term, and hath made Default; and that if the Action lie in the Country, the Defendant shall give the Plaintiff a Rule to Enter his Issue, as of the same Term Issue is joined.

If the Issue has been delivered and not tried (it is said) If the Plaintiff intend to desist, 'tis not convenient to Enter it on the Roll; for if it be not carried in, the Defendant, before he can carry it down by *Proviso*, must give the Plaintiff a Rule to bring in the Record, after which the Plaintiff hath the next Term to try it, before the Defendant can carry it down by *Proviso*; but if it be entered, and not tried, the Defendant may carry it down next Sessions after it is in the Office. Again, if the Defendant give the Plaintiff a Rule to Enter his Issue, (the Action being laid in *London* or *Middlesex*,) the Plaintiff must bring his Record into the Office, within four Days after Notice of the Rule; and if the Action be laid in the Country, he must bring it in before the Continuance-Day of that Term, or in Default thereof, a Non-Suit may be Signed and Entred, and Coits will be allowed the Defendant.

The Manner of Entering a Rule for the Plaintiff to Enter his Issue, is thus.

THE Defendant's Attorney carries the Copy of the Issue to the Master of the Office, and desires him to give a Rule to Enter the Issue, and he will write in the Margin of the Copy of the Issue, what Day he thinks fit, (for Example,) *Wednesday after the Octaves of Trinity, to reply and enter the Issue*; then carry this Rule to the Clerk of the Rules, and

and he will enter it, and write under the Rule King's Bench,
Entred: Make a Copy of the Issue at the same Time, and if he do not enter the Issue by the Day limited, the Master will sign Judgment and tax Costs: You must enter the Issue upon a Roll of the same Term, and add, And upon this the same (Defendant) prays, that the aforesaid (the Plaintiff) to the Plea of him (the Defendant) might reply, and thereupon by the Court of the Lord the King now here, a Day thereof is given to the aforesaid (Plaintiff) before the Lord the King, until, &c. to reply to the Plea aforesaid; the same Day is given to the aforesaid (the Defendant) and so enter the Continuance to the Term when the Rule is given; then say, At which Day here came the aforesaid (the Defendant) by his Attorney aforesaid, and the Plaintiff is called on by the Court of the said Lord the King, now here, that he should reply to the Plea aforesaid, and enter the Issue in the Plea aforesaid, on Wednesday, &c. that same Term, at his Peril, to keep safe, &c. at which Day, before the Lord the King, here came the aforesaid (the Defendant) by his Attorney aforesaid, and the aforesaid (the Plaintiff) altho' solemnly required did not come, nor hath replied to the Plea of the aforesaid (the Defendant) nor is his Writ aforesaid against the same (Defendant) further prosecuted; therefore it is considered, that the aforesaid (the Plaintiff) shall take nothing by his Writ aforesaid, but that he and his Pledges of prosecuting, to wit, John Doe and Richard Roe, be in Mercy, and the aforesaid (the Defendant) may go thereof without

Venire & Distringas.

Day, &c. And further, It is considered, that the aforesaid (the Defendant) shall recover against the aforesaid (the Plaintiff) . . . for his Costs and Charges by him about his Defence in this Behalf sustained to the same (the Defendant) adjudged by the Court of the said Lord the King, now here, according to the Form of the Statute in the like Case, upon this Account lately made and provided, and the same (the Defendant) may have thereof Execution, &c.

Q. Of the Continuance Day.

UPON the Writ of *Venire* being sealed, the Sheriff will return a Jury in a Pannel annexed to the Writ; upon which Pannel you make out a *Distringas Jurator* after this Manner.

Distringas
Jur.

You only seal
this Writ.

GEORGE, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. to the Sheriff of Somerset, Greeting: We command thee, that thou compel A B, C D, E F, &c. (naming all the Jurors with their Additions and Places of Abode, as they are set down in the Pannel) the Jury summoned in our Court before us, between A B Plaintiff, and C D Defendant (naming the Defendant) by all their Lands and Chatels in thy Bailiwick; so that neither they, nor any one by them, intermeddle therein, until thou have another Precept thereof from us, and that of the Issues of the same thou answer to us, so that thou have their Bodies before us at Westminster, on Friday
next

Vemire & Distringas.

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next after three Weeks of St. Michael (the first King's Bench, Day of the next Term, * or before our Justices assigned to take the Assizes in thy County, if before on Monday (the Day that the Assizes are held on) at (the Place where they are held) in thy County aforesaid, by Form of the Statute in the like Case lately made and provided, they come to make the certain Jury of the Country between the Parties aforesaid, of a Plea of Trespass (as the Action is) and to hear their Judgment of the Default of many, and have there then the Names of that Jury and this Writ. Witness Lord Raymond, at Westminster the 28th Day of June, in the Sixth Year of our Reign.

If your Distringas be in London, you say, O before our chosen and faithful Raymond our Chief Justice, appointed to hold Pleas in our Court before us, it first on Monday, the Day after the Sittings if in Term, but if the Sittings are after Term, then the first Day of the next Term, at Guildhall, London, by Form of the Statute, &c. If the Distringas be in Middlesex, then you must say, Before our chosen and faithful Raymond, &c. at Westminster aforesaid, in the Great Hall of Pleas there, by Form of the Statute, &c.

Ventris.

You must next seal this *Distringas*, and get the Sheriff to return it; and if there be an Occasion for a *Subpœna* for the Witness, (as commonly there is) you must make it as afterwards.

Note, That by an Act of 7 and 8 W. III. for the Ease of Jurors, and the better regulating of Juries, It is enacted,

‘ That if the Plaintiff shall not proceed to
 ‘ Trial of the Issue at the first Assizes after
 ‘ the *Tesle* of the Writ of *Habeas Corpus* or
 ‘ *Distringas* with a *Nisi prius*, that then, and
 ‘ in all such Cases (other than where Views
 ‘ by Jurors shall be directed) the Plaintiff
 ‘ or Demandant, when ever he shall think

Venire & Distringas.

King's Bench. ' fit to try the said Issue at any other Assizes,
 ' shall sue forth, and prosecute a new Writ of
 ' *Venire facias* directed to the Sheriff in this
 ' Form.

That of a new Venire facias before, &c.
Twelve free and lawful Men of the Body of
this County; let each of whom have Ten Pounds
of Lands, Tenements, or Rents by the Year, at
least, by whom, &c. and who neither, &c. after
 the ancient Manner; ' That is to say, The
 ' Writ is to be in the same Form as the first,
 ' only adding the Words, *Of a new*, which
 ' Writ being duly returned and filed, a Writ
 ' of *Habeas Corpora* or *Distringas*, with a
 ' *Nisi prius*, shall issue thereupon for the an-
 ' cient Fees, as in the Case of a *Pluries*, *Ha-*
 ' *beas Corpora* or *Distringas*, with a *Nisi prius*;
 ' upon which the Plaintiff or Demandant shall
 ' and may proceed to Trial, as if no former
 ' Writ of *Venire facias* had been prosecuted
 ' or filed in that Cause; and so as often as
 ' the Case shall require.

And if any Defendant or Tenant shall be
 ' minded to bring the Issue to Trial by *Pro-*
 ' *viso* (when by Course he may) he may of
 ' the issueable Term next preceding such in-
 ' tended Trial to be had at the next Assizes,
 ' sue a new *Venire facias* to the Sheriff, in
 ' Form aforesaid by *Proviso*, and prosecute
 ' the same by Writ of *Habeas Corpora* or
 ' *Distringas*, with a *Nisi prius*, as though
 ' there had not been any former *Venire facias*
 ' sued out or returned in that Cause, and so
 ' as often as the Matter shall require. But
 you

you must give Notice you intend to try the King's Bench.
Cause by *Proviso*.

And the Rules, when you do not try the Cause the same Sitting in *London* or *Middlesex*, and within the Term, you always seal the Record a-new, unless it be at the Sittings after Term, and then the same Record and Jury serve, unless a Juror be withdrawn, which is often done upon a Reference or View, the Sittings after Term being accounted but one Day in Law, though they are many.

Note, That in *Prohibition* it is said, either Party may carry down the Record, so that it may happen that two be carried at one Time; the Lady the Queen against Sir *James Banks*, about *Trinity*, 3 *Ann.* by the Court; that in Civil Actions, the Defendant cannot carry down a Cause to Trial by *Proviso* till after Default in the Plaintiff, except in some special Cases as in *Quare impedit*, *Replevin* and *Prohibition*, to have a Writ to the Bishop, Return or Consultation, and that there cannot be a Trial by *Proviso* in the King's Case, because there can be no Laches in the King, and the Court directed it for a Rule, that the Defendant should never carry an Indictment removed hither by the Prosecutor to Trial without Leave of the Court.

This Act also provides, That Jurors to serve upon the Tales shall be Freeholders or Copyholders of the County, and returned upon some other Pannel to serve at the said Assizes, and attending in Court, and may be challenged by Plaintiff or Defendant, Demandant or Tenant, as if they had been impannelled upon a *Venire Facias* to try the Issue.

Note,

King's Bench.

4 and 5

Anne, cap. 16.

Note, By the Act for Amendment of the Law, reciting that whereas great Delays do frequently happen in Trials by Reason of Challenges, to the Arrays of Pannels of Jurors, and the Polls for the Want of Hundreders; for Prevention whereof, 'tis enacted, That every *Venire facias* for the Trial of any Issue, in any Action or Suit in any of his Majesty's Courts of Records at *Westminster*, shall be awarded for the Body of the proper County where such Issue is triable; but this Act is not to extend to Appeals, Indictments, Presentments of Felony, Murder or Treason, nor to Penal Statutes.

5 Geo. II.

See the late Act for electing a Jury by Ballot.

View by JURORS.

AL SO, It is Enacted, That when a View of Messuages, Lands or Places in question, shall be thought necessary by the Court, for the Jurors better understanding the Evidences that will be given upon the Trials of such Issues in every such Case, the respective Courts in which such Action shall be depending, may order special Writs of *Distringas* or *Habeas Corpora* to issue; by which the Sheriff, or such other Officer to whom the said Writs shall be directed, shall be commanded to have six out of the first twelve of the Jurors named in such Writs, or some great Number of them at the Place in question, some convenient Time before the Trial, who then and there shall have the Matters in question shewn to them by two Per-
sons

sons in the said Writs named, to be appoint-^{King's Bench}
ed by the Court; and the said Sheriff or other
Officer, who is to execute the said Writs,
shall, by a special Return upon the same, cer-
tify that the View hath been had according
to the Command of the said Writ.

*Distringas on the Statute, 5 Anne, for
a View by JURORS.*

GEORGE, &c. To the Sheriff of S, Greet-
ing: We command thee, that thou com-
pell W N of, &c. (and so write the whole
Pannel) the Jurors summoned in our Court be-
fore us, between A B Plaintiff, and C D De-
fendant, by all their Lands and Chattels in
thy Bailiwick, so that neither they themselves,
nor any one by themselves, put a Hand to
the same, until thou shalt have thereof
another Precept from us, and that of the Issue
of the same thou answer to us, so that thou
have their Bodies before us at Westminster,
on Saturday next after or be-
fore our Justices assigned to take the Assizes in
thy County. If before Wednesday at
H, in thy County aforesaid, by Form of the
Statute in such Case thereof made and provid-
ed, they should come to make a certain Jury of
the Country between the Parties aforesaid, of a
Plea of Trespass, and to hear thereof their Judg-
ment of the Defaults of many; and in the mean
Time, according to the Form of the Statute
in the like Case thereof lately made and pro-
vided, We command thee, that thou have six
of the first twelve of the Jurors aforesaid, or
any greater Number of them, at the Place in
question

King's Bench.

upon (such a Day) next following, who then shall have a View of the same Place, in the Presence of E F on the Behalf of the Plaintiff, and G H on the Behalf of the Defendant, appointed by our Court before us, to shew the Place aforesaid to the Jurors aforesaid, and after what Manner so ever, this our Precept you shall cause to be executed, you shall make Return to us at Westminster at the aforesaid Day to our Justices, at the Assizes aforesaid, this our Writ remitting to us. Witness Lord Raymond, at Westminster, the 28th Day of June, in the Sixth Year of our Reign.

*Ventris.**A Subpœna for Witnesses.*

*Put 4 Names
in one Sub-
pœna.*

GEORGE, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. to A B, C D, E F, and G H, (naming your Witnesses) Greeting: We command you, and every of you strictly enjoining, that forbearing (or ceasing) all and singular Business and Excuses whatsoever, in your proper Persons you be, and every one of you be before our Lord Justices assigned to hold the Assizes in the County of Somerset, on Wednesday (the Day the Assizes are held) next following, at . . . (the Place where they are held) in the County aforesaid, to testify all and singular these Things, which you or any of you know in a certain Action in our Court, before us now pending undetermined, between

If in London, then before our chosen and faithful Raymond, our Chief Justice, as before, at Guildhall, London, &c.

If in Middlesex, before our chosen the Chief Justice, as before, at Westminster, in the Great Hall of Pleas there, &c.

Tickets for Witnesses.

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between A B Plaintiff, and C D Defendant, King's Bench.
of a Plea of Trespass (as the Action is) and
at that Day by a Jury of the Country to be
tried; and this, by no means, you are not to
omit, nor any of you omit, under the Penalty
of each of you, of One Hundred Pounds.
Witness Robert Lord Raymond, at Westminster,
the 28th Day of June, in the Sixth Year of
our Reign. *Ventris.*

See after the Form of a *Subpæna, ad Testificandum* upon a Writ of Enquiry of Damages.

Upon this *Subpæna* there are Tickets to be filled up, or made after this Manner.

Tickets for Witnesses.

BY Virtue of a Writ of *Subpæna* to you Mr. A B
 directed and herewith shewed unto you,
 you are personally to be and appear * before For London
 his Majesty's Justices of Assize, on . . . or Middlesex,
 next, being the tenth Day of *September*, at then before
 Nine of the Clock in the Forenoon of the Lord Ray-
 same Day, at the Court then to be holden at mond, &c.
 . . . in the County of . . . to testify Change where
 the Truth according to your Knowledge, in a it is to be
 certain Cause now depending, and then and changed.
 there to be tried between *A B* Plaintiff, and
C D Defendant, in a Plea of — on the Part
 of — and hereof you are not to fail, on Pain
 of One Hundred Pounds. Dated the —
 Day of — in the Sixth Year of the Reign
 of our Sovereign Lord George the Second, by
 the Grace of God, of Great Britain, France
and

King's Bench. and Ireland, King, Defender of the Faith, &c.
and in the Year of our Lord, 1732.

Of Sealing Records.

NOTE, You must get your Record Sealed at the *Nisi Prius* by the *Custos Bre-vium*, who (in Truth) ought to make up your Record and keep Clerks for that Purpose, and you are to pay him for it; but for Dispatch, the Clerk or Attorney makes them up himself.

*Notice of
Trial.*

You are also to give the Defendants Attorney Notice of Trial in this manner for *London* or *Middlesex*.

Take Notice of Trial in this Cause for the Sittings after this present *Trinity* Term, on ——— Day of ——— at ———

And *Note* there must be eight Days Notice given to the Defendants Attorney of any Trial in *London* or *Middlesex*, unless the Defendant lives above forty Miles from *London*, and then 'tis fourteen Days.

But eight Days Notice of Trial at the Affizes, 'tis said is good, let the Defendant live where he will, but not upon an old Issue.

If a Cause have continued four Terms without any Prosecution, before Issue joined, the Defendant is to have a Term Notice to plead, &c. before Judgment can be entered by default; if after Issue joyned, a Terms Notice before Trial, or if after Judgment obtained by Default, a Terms Notice of executing a Writ of enquiry.

If Notice of Trial be given in *London* or *Middlesex*, and the Cause be not enter'd in the

the Lord Chief Justices's Book, two Days before the Day that it is to be tried, the Marshal shall enter a *Ne recipiatur* at the Request of the Defendant or his Attorney. And there is a Rule made, that the Cause shall be enter'd four Days before Trial. *Ne recipiatur.*

And if the Plaintiff give Notice to the Defendant, that he will try his Cause on a certain Day within Term, altho' it be not tried at the Day appointed, yet he is not bound to give new Notice of Trial, but may try it the next Sitting in the same Term; upon two Days Notice; but if not tryed the next Sitting, then Notice to be given as at first.

If there are so many Causes to be tried on the Day appointed that the Cause cannot be tried, and it is made a *Remanet*, the Plaintiff need not give new Notice, but the Defendant must attend till it can be tried.

Costs for not proceeding.

ALSO if the Plaintiff proceeds not to Trial after Notice, (and no countermand) then the Defendant shall have Costs taxed by the Secondary, upon Affidavit of Attendance and Costs, which Affidavit may be in the matter following, (to wit.)

In the
King's Bench.

Between A. B. Plaintiff,
and C D. Defendant.

RG, maketh Oath, that he this Deponent with the Defendant and Witnesses attended at the last Assizes, held at New Sarum, for the County of Wilts, pursuant to a Notice of

*You must have
in Affidavit
setting forth
the Charges
of the Witnes-
ses, Expences,
&c. to obtain
your Cost.
of*

King's Bench. of Trial formerly given by the Plaintiffs Attorney, and that then the Plaintiff did not proceed to Trial, neither did this Deponent receive or hear of any Countermand thereof.

Sworn the — Day of
— before R.

R. G.

Or if a Countermand was given at the Assizes say.

Neither heard this Deponent of any Countermand thereof, until *Monday* the fifteenth Day of *July* last, at Night, &c.

But *Note*, This is done upon a Motion in the *King's Bench*, but without Motion in the *Common-Pleas*.

Note, At the Assizes you get the Sheriff to Return the Distringas of the Jury, and then you deliver the Record to the Judges Marshal.

The next thing is to draw the Breviates for the Counsel, wherein great Knowledge and Experience is required; especially to know what Proof is requisite to be made, and sometimes what is Evidence, and what not, and to

*See some Directions after
in Declaration
in Ejectment.*

set forth the Case Summarily, and yet perspicuously and fully, and sometimes also what is supposed will be objected by the other Side. But our Clerk will be no further Concerned therein at first, than to Write them fairly over, so that we shall proceed how to enter up Judgment after Trial.

P O S T E A.

WHEN the Trial is over, and the Court Fees paid, if your Action be laid in *London* or *Middlesex*, the Associat will deliver

deliver you your Record; with the *Distringas*, King's Bench. and the Panel or Names of the Jury thereunto Annexed, upon the back of which Panel he writes the Substance of the Verdict, and the Costs given by the Jury, which you must take care to fix to your Record, that it may not be Lost; then get the Record Stamp with a new double 2 s. 6 d, Stamp, and scrape or rub the back of the Record with a Pumice Stone, that it may be fit to write on, and about two Fingers from the top, with a Margent about three or four Fingers broad, begin your *Postea* long ways, and not as you write your Record; the Substance and Meaning of which *Postea* is this, that afterwards the Plaintiff and Defendant came by their Attornies before the Lord Chief Justice, or Judge of the Assize, (as the Case is) and the Jury was Sworn, &c. and then set forth what Verdict they found, and what Costs they Gave. The form of this *Postea* followeth.

The Form of a Postea, by Default with Tales.

Afterwards at the Day and Place under contained before Robert Lord Raymond, Chief Justice under written, having associated to him, J. J, Gentleman (that is the Judges associate, who delivers you the Record) by form of the Statute, &c. Came the Undernamed A B. (to wit, the Plaintiff) by his Attorney under contained, and the undernamed C D. (the Defendant) altho' Solemnly required, did not come, but made Default, therefore let the Jury
G under

King's Bench. *underwritten be taken against him by Default, and the Jurors of that Jury being summoned, certain of them (to wit) E F. G H. Reciting the Names of so many of the Jury of the principal Pannel which is Annexed to your Distringas, as you shall find there to have been Sworn, for against every Man's Name, that hath been Sworn, there is writ Sworn, then say, Came and on that Jury being Sworn, upon their Oath, say that the aforesaid C D, (the Defendant) undertook in manner and form, so as the aforesaid A B. (the Plaintiff) within against him hath complained, and they assess the Damages of him A B. on Account of the not performing the Promises and Undertakings under written, besides his Costs and Charges by him about his Suit in this behalf laid out to twenty Pounds, and for those Costs and Charges to Fifty-three Shillings and Four-pence. (the usual Costs given by the Jury) therefore, &c.*

This is the Form of a *Postea* in an Action of the Case upon Promise, wherein there is a Verdict for the Plaintiff by Default, that is, when the Defendant, after the Jury is returned, or ready to give in their Verdict, doth not appear, being called, knowing the Verdict will certainly be against him.

There are several other Forms of *Posteas*, of which it is necessary to add some Precedents.

*The Form of a Postea for the Plaintiff,
upon Non Assumpsit, where the De-
fendant appears, and does not make
Default.*

A *fterwards at the Day and Place, &c. came
as well the within named A B, as the
within written C D, by their Attorneys after
contained, and the Jurors of the Jury, where-
of Mention is under made, being summoned, cer-
tain of them, to wit, E F, G H, &c. came,
and on that Jury being sworn, upon their
Oath, say that the aforesaid C D undertook
in Manner and Form, so as the aforesaid
A B within against him complains, and they
assess the Damages of him A B, by Means
of the not performing the Promises and Under-
takings underwritten, over and above his
Costs and Charges by him about his Suit put
unto in this Behalf, to One Hundred Pounds,
and for those Costs and Charges, to Fifty Three
Shillings and Four Pence. Therefore, &c.*

For the Defendant upon Non Assumpsit.

A *fterwards at the Day, &c. say upon their
Oath, that the aforesaid C D did not
undertake in Manner and Form, so as the
aforesaid C D, by his Pleading, hath within
alledged, &c.*

For the Plaintiff upon *Non Culp.* in
Trover.

Afterwards at the Day, &c. say upon their Oath, That the aforesaid C D, is guilty of the Premises under written, in Manner and Form, so as the aforesaid A B within against him hath declared, and they assess the Damages of him A B, on the Account under written, besides his Costs and Charges by him laid out about his Suit in this Behalf, to One Hundred Pounds, and for those Costs and Charges, to Fifty Three Shillings and Four Pence. Therefore, &c.

In *Detinue* for the Plaintiff.

Afterwards at the Day, &c. say upon their Oath, that the aforesaid C D detains from the aforesaid A B, the underwritten Four Quarters of Corn, so as the aforesaid A B within against him complains; and further, the Jurors say upon their Oath, That the same four Quarters of Corn were worth Four Pounds, and they do assess the Damages of him A B, by Means of the detaining the aforesaid four Quarters of Corn to Twenty Shillings, and for those Costs and Charges to Fifty Three Shillings and Four Pence. Therefore, &c.

The Judgment in this is remarkable, therefore I add it here, Therefore it is considered, that the aforesaid A B might recover against the aforesaid C D, the aforesaid four Quarters, or the aforesaid Four Pounds for
the

the Value of the same, and his Damages afore- King's Bench. said, &c.

Another in *Detinue* for the Plaintiff.

Afterwards at the Day, &c. say upon their Oath, That the aforesaid C D detains from the aforesaid A B the underwritten Silver Cup, in the Declaration underwritten, within specified in Manner and Form, so as the aforesaid A B within against him complains, and they do assess the Damages of him A B, on Account of detaining that Silver Cup, besides his Costs and Charges by him about his Suit in that Behalf put to, if the same A B can have Delivery of the self same Silver Cup, to Ten Shillings, and for his Costs and Charges, to Fifty Three Shillings and Four Pence; and if the same A B cannot have Delivery of the same Silver Cup, then the Jurors aforesaid assess the Damages of him A B for the Value of the Silver Cup aforesaid, over and above his Costs and Charges aforesaid, by them the Jurors, in Form aforesaid, assessed to Five Pounds, &c.

For the Plaintiff in Debt upon Conditions performed.

Afterwards at the Day, &c. say upon their Oath, That the aforesaid C D hath not paid the aforesaid A B upon the underwritten Feast Day of St. John the Baptist, which was in the Tear of our Lord 1730, underwritten, in the Condition underwritten, above specified, the underwritten One Hundred Pound, which

King's Bench.

to him at, or upon the same Day he ought to have paid, according to the Form and Effect of the Condition aforesaid, in Manner and Form, so as the aforesaid C D within, by his Pleading hath alledged, and they do assess the Damages of him A B on that Account, over and above his Costs and Charges by him about his Suit in this Behalf put unto, to Four Pence, and for those Costs and Charges to Fifty Three Shillings and Four Pence. Therefore, &c.

For the Plaintiff upon *Solvit ad Diem*,
pleaded to a penal Bill.

Afterwards at the Day, &c. say upon their Oath, That the aforesaid C D did not pay to the aforesaid A B the undermentioned One Hundred Pound, upon the underwritten Tenth Day of the then Instant October, according to the Form and Effect of the Bill obligatory under mentioned, in Manner and Form, so as the aforesaid A B within against him complains, and they assess the Damages of him A B, by means thereof, over and above his Costs, &c.

For the Plaintiff upon *Non est factum*.

Afterwards at the Day, &c. say upon their Oath, that the underwritten Writing obligatory for the underwritten One Hundred Pounds in the Declaration underwritten, within mentioned, is the Deed of the aforesaid C D, so as the aforesaid A B within thereof against him complains, and they assess the Damages of him A B put unto by that means over and above

above his Costs and Charges by him about his King's Bench Suit in this Behalf, to Four Pence, and for those Costs and Charges, to Fifty Three Shillings and Four Pence. Therefore, &c.

For the Plaintiff upon *per Dures* pleaded.

Afterwards at the Day, &c. say upon their Oath, That the underwritten C D, the Day and Year in the Declaration under specified, was of his own Right at large out of any Prison, and the Writing obligatory under mentioned by his only and free Will made, sealed, and as his Act to the same A B then and there delivered, and not by Force and Hardship of that Imprisonment, in Manner and Form, so as the aforesaid C D within by his Pleading hath alledged, and they assess the Damages of him A B, by reason of the detaining of that Debt undermentioned, over and besides the Costs and Charges by him put unto, about his Suit in this Behalf, to Twelve Pence, and for these Costs and Charges, to Fifty Three Shillings and Four Pence.

For the Plaintiff in an Assault and Battery upon *Non Culp.* (not guilty.)

Afterwards at the Day, &c. say upon their Oath, That the aforesaid C D, the Day Year and Place under specified, upon the aforesaid A B made an Assault, and him beat, wounded and evilly treated in Manner and Form, so as the same A B within against him hath declared; and they assess the Damages of him A B, by reason of the Premises under

King's Bench. contained, over and above his Costs and Charges by him put unto about his Suit in this Behalf, to Ten Pounds, and for those Costs and Charges, to Fifty Three Shillings and Four Pence. Therefore, &c.

For the Plaintiff upon Son Assault
Demesne.

Afterwards at the Day, &c. say upon their Oath, That the aforesaid C D, the Day and Year aforesaid, by the Force and Arms aforesaid, of his own proper Wrong, and without the Cause by him C D above alledged upon him A B, at R aforesaid, made an Assault, and him bath beat, wounded, and evilly handled, so that he despaired of his Life, against the Peace of the now Lord the King, so as the aforesaid A B within against him complains; and they assess the Damages of him A B, by him put unto, about his Prosecution in this Behalf, to Forty Shillings, and for his Costs and Charges to Fifty Three Shillings and Four Pence. Therefore, &c.

The Continuance of these Posteas upon the Roll are after this Manner. After the joining of the Issue there, &c. you add thus.

Postea continued on the Roll.

Afterwards continued thereof Process between the Parties aforesaid, of the Plea aforesaid, by the Jury put thereof between them, in respite before the Lord the King at Westminster, until Monday next after the Octaves (the eighth

eighth Day) of the Purification of the Blessed King's Bench.
 Mary from thence next following, unless the
 Chosen and Faithful of the Lord the King, Ro-
 bert Lord Raymond Chief Justice of the said
 Lord the King, appointed to hold Pleas in the
 Court of him the Lord the King, before the King
 himself, shall before on Saturday next after the
 Octaves (the eight Day) of the Purification
 of the Blessed Mary, at Guildhall, London, by
 Form of the Statute, &c. come for want of
 Jurors, &c. At which Day before the Lord the
 King at Westminster, came the aforesaid A B,
 by the aforesaid E F his Attorney aforesaid,
 and the aforesaid Chief Justice before whom,
 &c. sent here his Record before him, had
 in these Words, to wit, Afterwards at the Day
 and Place, &c. as before unto. Therefore, &c.
 See after for entering up the Judgment.

If at the Assizes, say,

Afterwards continued thereof Process, &c.
 as before unto, Unless the Justices of
 the Lord the King appointed to keep the Assizes
 in the County aforesaid, shall on Tuesday the
 Twenty second Day of August, at S in the
 County aforesaid, by Form of the Statute, &c.
 come for Defect of Jurors, &c. at which Day
 before the Lord the King at Westminster,
 came the aforesaid S, by his Attorney aforesaid,
 and the aforesaid Justices of the Lord the
 King at the Assizes, before whom, &c. sent
 there their Record before them had in these
 Words, to wit, Afterwards at the Day and
 Place under contained, &c.

For

For the Plaintiff in Ejectment.

Afterwards, to wit, at the Day and Place under contained, before Robert Lord Raymond, Chief Justice underwritten, having associated to him John Juce, Gentleman, by Form of the Statute, &c. came as well the under named A B, as the underwritten C D, by their Attornies under contained, and the Jurors of the Jury, whereof under is made Mention, being summoned likewise, came, who to the Truth of the under contained being called, chosen, tried and sworn, say upon their Oath, That the aforesaid C D is guilty of the Trespass and Ejectment underwritten, in Manner and Form, so as the aforesaid A B within against him complains, and assess the Damages of him A B on Account of that Trespass and Ejectment, besides his Cost and Charges by him put unto about his Prosecution in that Behalf, to Twelve Pence, and for those Costs and Charges to Fifty Three Shillings and Four Pence. Therefore, &c.

For the Defendant in Ejectment.

Afterwards, to wit, the Day, &c. say upon their Oath, That the aforesaid C D is not guilty of the Trespass and Ejectment under specified, so as the same C D within by Pleading hath alledged. — And the Judgment is, -- It is therefore considered, That the aforesaid A B shall take nothing by his Bill aforesaid, but for his false Clamor may be thereof in Mercy, and the aforesaid C D may thereof go without a Day.

For the Plaintiff in Ejectment where the Jury find the Defendant Guilty as to a fourth Part, and the rest not Guilty.

Afterwards at the Day and Place, &c. try-ed and sworn as to the underwritten Trespas and Ejectment, in the fourth Part of all, and singular the Tenements under-written with the Appurtenances (the same Tenements in four Parts on this Account to be divided.) Say upon their Oath, that the aforesaid C D, is thereof Guilty, in manner and form as far as the aforesaid A B, within against him complains, and assess the Damages of him A B, by means of that Trespas and Ejectment, over and above his Costs and Charges, by him put unto about his Prosecution in this behalf to Six-pence, and for those Costs and Charges to forty Shillings; and as to any Trespas and Ejectment in the three other Parts of the Tenements aforesaid, with the Appurtenances, the Residue of all the Tenements aforesaid (in four Parts on this Account to be divided,) the Jurors aforesaid further say upon their Oath aforesaid, that the aforesaid C D, is not Guilty, so as the same A B, within on this Account in pleading hath alledged.

For the Defendant where the Plaintiff is non-suited.

Afterwards at the Day and Place under contained, before Robert Lord Raymond, Chief Justice of the Lord the King, having associated to him Gentleman, by
Form

King's Bench. *Form of the Statute, &c. came as well the undernamed A B Plaintiff, as the underwritten C D Defendant, by their Attornies under contained, and the Jurors of the Jury whereof under Mention is made, being required likewise, came, who to the Truth of the under contained being called, chosen, tried and sworn, and from the Bar here retired, to consult of their Verdict thereupon to be given, and on this Account between themselves consulted and agreed; and to give that Verdict they returned to the Bar here, upon which the aforesaid A B, although solemnly required, did not come, nor is he for further prosecuting his Bill underwritten against the aforesaid C D. Therefore, &c.*

For the Plaintiff upon *Plene Administravit.*

Afterwards at the Day, &c. say upon their Oath, that the aforesaid C D, on the Day of obtaining the Bill under specified, to wit, the three and twentieth Day of January, in the Year, &c. had divers Goods and Chattels, which were the underwritten J. S (to wit, the Testator or Intestate) and divers Goods and Chattels which were the aforesaid J. S's. at the Time of his Death, in the Hands of the aforesaid C D to be administered, and they give Damages, &c.

Another

Another in Case.

Afterwards at the Day, &c. say upon their Oath, That the aforesaid C D, the Twenty third Day of January, in the Year, &c. had divers Goods and Chattels, which were the aforesaid J. S's. at the Time of his Death, in his Hands to be administred, to the Value of the aforesaid One Hundred Pounds in the Declaration aforesaid above specified, in Manner and Form, so as the aforesaid A B above hath alledged, and assess the Damages of him A B, by means of the not performing the Promises and (Undertakings) aforesaid, over and above his Costs and Charges by him put into about his Suit in that Behalf, to and for these Costs and Charges to Fifty three Shillings and Four Pence. --- The Judgment is, --- It is therefore considered, That the aforesaid A B may recover against the aforesaid C D his Damages aforesaid, by the Jury aforesaid, in Form aforesaid assess'd, and also Twenty Shillings and Ten Shillings for his Costs and Charges to the same A B, by the Court of the Lord the King, now here on his Assent of Increase adjudged, which said Damages amount in the whole to ----- to be levied of the Goods and Chattels which were the aforesaid J. S's, in the Hands of the aforesaid C D to be administred, if he hath so much in his Hands to be administred; and if he hath not so much in his Hands, then the aforesaid --- Pounds for the Costs and Charges aforesaid, to be levied of the proper Goods and Chattels of

King's Bench. of him C D, and the aforesaid C D in Mercy, &c.

Posteas of Records at the Assizes.

*The Judges
associate who
returns these
Posteas.*

*That the
Defendant as-
sumed.*

Afterwards at the Day and Place under contained before Robert Lord Raymond, Chief Justice of the Lord the King of the Bench, and S L, Esq; to the same Lord Raymond, and J P Knight, one of the Justices of the said Lord the King, appointed to keep the Assizes in the County of B; by Form of the Statute, &c. for this Turn associated present the aforesaid J P not expected, by Virtue of the Writ of the said Lord the King of Si non omnes (if not all) &c. came the undernamed S P, by his Attorney under contained, and the underwritten R O, Gentleman, altho' solemnly required, did not come, but made Default; therefore the Jury, of which under is made Mention, may be taken against him by Default, and the Jurors of that Jury solemnly being required, came, who to the Truth of the under-contained being sworn, say upon their Oath, That the aforesaid R O assumed upon himself in Manner and Form, so as the aforesaid S P within thereof against him complains, and they assess the Damages of him S P, by the Occasion under specified, over and above his Costs and Charges by him put unto about his Suit in this Behalf, to Four Pounds, and for those Costs and Charges, to Forty Shillings. Therefore, &c. --- The Judgment hereupon is, --- Therefore, It is considered, that the aforesaid S P shall recover against the aforesaid R O, the Damages aforesaid, by the Jury aforesaid

in Manner aforesaid assessed, and also Ten ^{King's Bench.} Pounds for his Costs and Charges aforesaid to the same (S) by the Court of the said Lord the King now here, on his Assent of Increase adjudged, which said Damages amount in the whole to Sixteen Pounds, and the aforesaid R in Mercy.

Mercy.

See before for the Continuation of Posteas upon the Roll.

Upon an Issue, whilst as well to the trying of the Issue, as to enquiring what Damages upon a Demurrer.

Afterwards at the Day and Place under contained, &c. as before unto, Who to the Truth of the under contained being called, chosen, tried and sworn, as to the Want of Reparation of the Chancel under specified, within assigned, say upon their Oath, that the aforesaid Dean and Chapter demised to the under-named G H, the Chancel under specified in Manner and Form, as the aforesaid Dean and Chapter, by their Declaration within thereof have alledged; and they set out the Damages of them D and C, by reason of the Breach of those Covenants in the Issue underwritten, between the Parties aforesaid, within join'd, over and above their Costs and Charges by them about their Suit in this Behalf put unto, to Two Hundred Pound, and for those Costs and Charges, to Forty Shillings; and as to the enquiring what Damages the aforesaid D and C have sustained, by Means of the Breach of the Covenants underwritten, whereupon the Parties a-

fort-

King's Bench. *foresaid have put themselves upon the Judgment of the Court, if it shall happen, that Judgment for the aforesaid D and C against the aforesaid C D be thereof given, then the same Juries say upon their Oath, that the aforesaid D and C have sustained Damages on that Account to One Hundred Pound: Therefore it is considered, That the aforesaid D and C shall recover against the aforesaid C G the Damages aforesaid, by the Jury aforesaid, in Form aforesaid set out, and also Eleven Pound Six Shillings and Eight Pence for the Costs and Charges aforesaid, to the same D and C, by the Court of the said Lord the King now here, on their Assent of Increase adjudged; which said Costs amount in the whole to One Hundred and Twenty three Pounds Six Shillings and Eight Pence, and the aforesaid C in Mercy (&c.)*

Upon a Special Verdict.

Afterwards Process is thereupon continued, (&c.) Afterwards at the Day and Place under contained before J. P, Esq; one of the Justices of the Lord the King of the Bench, and S D Serjeant at Law, Justices of the same Lord the King, appointed to hold the Assizes in the County of D, by Form of the Statute, &c. came, as well the undernamed C D, as the underwritten R R by their Attornies undercontained, and the Jurors of the Jury, whereof Mention is under made being required likewise, came, who to the Truth of the undercontained, being called, chosen, tried and sworn, say upon their Oath, That before the Trespass
and

and Ejectment in the Lands in the Declaration ^{King's Bench.} underwritten, mentioned one J H was seized of the same Lands in his Demesne as of Fee, and being so seized, made his last Will and Testament in Writing (among other Things) of the Lands underwritten, by the Name of a certain Intache in these Words, I give and bequeath unto Ann Harrison, Daughter of my Son-in-Law Thomas Harrison, my Intache in Hopefield, if my Son Thomas Hyblin happen to have no Issue Male, after the Decease of my Wife, and if my Son Thomas Hyblin have Issue Male, then my Will is, that the said Anne shall have Five Pounds paid her in lieu of the said Intache, and afterwards the aforesaid J dyed, having Issue the aforesaid Thomas Hyblin, who had Issue Male of his Body lawfully issuing, one Richard Hyblin: And the Jury further upon their Oath aforesaid, say, That Anne the Wife of the aforesaid John Hyblin, the same John out lived, and afterwards died; and that the aforesaid Five Pounds, in the last Will aforesaid mentioned, was offered to the aforesaid John Harrison, after the Death of the aforesaid, Issue Male, and by the same Anne Harrison refused; and further the Jurors aforesaid, upon their Oath aforesaid, say, That one Anne and Elizabeth Hyblin are the Sisters and Heirs of the aforesaid Richard, and that the aforesaid Richard the Son of the aforesaid Thomas died without Issue Male of his Body lawfully issuing, and that the aforesaid Anne Harrison entered on the Lands underwritten, and the same demised to the undernamed G A the Plaintiff, by Vertue of which the aforesaid G, on the Lands

H

under-

King's Bench. *underwritten entered, and was thereof possessed, until the underwritten R R in and upon the Possession of him G entered, and him ejected from his Possession in Manner and Form, as the underwritten G further against him hath declared, and that the aforesaid R R, the now Defendant, is Guardian of the aforesaid Anne and Elizabeth Hyblin, and hath entered for their Use; but whether upon the whole Matter aforesaid, by the Court aforesaid, in Form aforesaid, plainly found the aforesaid R R may be guilty of the Trespass and Ejectment aforesaid, or not, the Jurors aforesaid do not know, and thereupon pray the Advice of the Justices and Court here; and if upon the whole Matter aforesaid, in Form aforesaid plainly found, it shall happen to the Justices and Jury here, that the aforesaid R R is guilty of the Trespass and Ejectment underwritten, then the Jurors aforesaid, upon their Oath aforesaid, say, That the aforesaid R R is guilty of the Trespass and Ejectment underwritten in Manner and Form, like as the aforesaid G A within against him complains, and they set out the Damages of him G A, by Means of the Trespass and Ejectment over and above his Costs and Charges by him laid out about his Suit in this Behalf, to Six Pence, and for those Costs and Charges, to Forty three Shillings and Four Pence: But if upon the whole Matter aforesaid, in Form aforesaid, plainly found, it shall appear to the Justices and Court here, that the aforesaid R R is not guilty of the aforesaid Trespass and Ejectment, then the Jurors aforesaid, upon their Oath aforesaid, say, That the aforesaid R R is not guilty*
of

of the Trespass and Ejectment aforesaid, so as King's Bench.
the same R within for himself in Pleading hath
alledged; and because the Court of the said
Lord the King now here, is not yet deter-
mined to give their Judgment of, and upon The Court.
the Premisses a Day is thereupon given to the is not advised.
aforesaid G A, that he may be before the Lord
the King at Westminster, on Wednesday next
after the Octaves (the eight Day) of the
Holy Trinity, and then to hear their Judg-
ment, to the End that the Court of the said Lord
the King here, is not as yet advised (and so is
continued until Trinity Term next following)
at which Day, before the Lord the King at
Westminster, came the Parties aforesaid by
their Attornies aforesaid; upon which having
seen, and by the Court of the said Lord the
King now here fully understood, all and singular
the Premisses, and with mature Deliberation
thereupon had, it is considered, that the afore-
said G A should recover against the aforesaid
R R his Term aforesaid yet to come, of, and
in the Tenements aforesaid, with the Appur-
tenances, and his Damages aforesaid, by the
Jury aforesaid, in Form aforesaid set out, and
also Thirteen Pound Six Shillings and Eight
Pence for his Costs and Charges, to the same
G A, by the Court of the said Lord the now
King, on his Assent of Increase adjudged, which
said Damages amount in the whole to Six-
teen Pounds Eight Shillings, and let the afore-
said R R be taken, &c.

There are several other Forms of Posteas,
as the Action, Verdict, and divers Sorts of
Proceedings require, which would take up too
much Room in this small Treatise; these are

King's Bench. inserted as being of general Use, and to give Insight into the Forms and Methods of drawing them up, and as it was observed before, if the Trial be at the Assizes in the County, the Judges associate ingrosseth the *Postea* on the Record; and so in those Cases it is not the Attorney's Business, he only carrieth it to the Master to have Costs taxed, and then enter up Judgment according to the former and following Instructions.

When you have the *Postea* ingrossed, carry to the Clerk of the *Posteas* to be mark'd, and he will write on the Top of your *Postea* the Day of the Month *D* by --- for which you pay him Four Pence, then carry your *Postea* to the Clerk of the Rules, and desire him to give a Rule of the *Postea*, for which you must pay him One Shilling and Four Pence; that Rule will be out in Four Days, if Sunday doth not intervene, and then five; for the Defendant hath always Four Days to move the Court in arrest of Judgment, if he hath any Cause to shew; as that neither he nor his Attorney had Notice of Trial, or that the Record differs from the Declaration pleaded unto in some material Point, and several Causes may be alledged, of which generally an Affidavit ought to be made.

Four Days are allowed for Arrest of Judgment.
Postea upon a Trial at the Assizes.

When the Rule is out if the Judgment be not arrested, you have the Record stamped on the Back with a double half Crown Stamp, and carry it to the Master of the Office, Mr. Clerk, and he will tax your further Costs, which are called Costs of Increase, and then is your Judgment fit to be entered.

But

Rolls and Judgments.

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But if your Trial be at the Assizes, in the ^{King's Bench.} Country, then you do not take away the Record and *Distringas* with you, but the Associate keeps it till the next Term, indorses the *Postea* upon it, for which he receives his Fee at the Trial, and you are to call upon him a little before the Beginning of the ensuing Term, to put him in mind to have the *Postea* ready, and then you must proceed to have it mark'd, and a Rule given and Judgment signed as before ; yet, for Expedition, you will have Occasion to enter the *Postea* ^{Judgment to be entered on the Roll.} yourself. Now for the entering the Judgment, Care must be taken that no Error be committed : The Rolls to enter them upon are delivered out by Mr. Gibbons in the Middle Temple. You must make a small Margin about a Thumb's Breadth, then begin about a Span from the Top of the Roll in large Hand, in these Words, *Hitherto of the Term of St. Hillary, as the Term is, Witness Lord Raymond ;* then next it is usual, according to a late Rule, to write the Warrant of Attorney next, after this Manner (to wit) *London, to Warrants of wit, A B puts in, his place J C his Attorney, Attorney on against C D of a Plea of Trespass on the Case the Roll.* (or as the Action is, as concerning a Plea of Debt, &c. if there be an *otherwise called in* By Stat. 4 and 5 Ann the Declaration, your Warrants of Attorney the Attorney must be so too, and so if there be Executors for the Plaintiff shall file or Administrators,) then under the first you his Warrant enter another for the Defendant thus. *London, of Attorney the (to wit, C D, (to wit) the Defendant) puts in same Term he his Place E F his Attorney, against A B in the declares, and the Defendant Plea aforesaid, (some put it at the Suit of A B the same Term is the Plea aforesaid which seems the better he appears.*

King's Bench. way) then within half an Inch under, begin to
 Upon a Tryal enter the Judgment thus.
 London.

London, to wit, **I**t is to be remembered, &c.
 as before ; so recite the
 whole Record, till you come to the End of
 the Issue, and then say, *Afterwards Process*
is thereupon continued between the Parties
aforesaid of the Plea aforesaid, by the aforesaid
Jury put thereof between them, in respite be-
fore the Lord the King at Westminster, until
Wednesday, &c. (as it is in the Jurat of the
Record) unless the chosen and faithful Lord
Raymond Chief Justice of the Lord the King
assigned to hold Pleas in the Court of him
the Lord the King, before the King him-
self, shall before on Wednesday (as in the
Jurat) at Guildhall, London, by Form of the
Statute, come, for Defect of Jurors, &c. At
which Day before the Lord the King at West-
minster, came the aforesaid A B, by his At-
torney aforesaid, and the aforesaid Chief Jus-
tice, before whom, &c. sent here his Record
before him, had in these Words, to wit, Af-
terwards at the Day and Place, &c. there re-
cite the whole Postea verbatim (Word for
Word) It is therefore considered, that the aforesaid
A B should recover against the aforesaid
C D his Debt aforesaid, and his Damages
aforesaid, by the Jury aforesaid, set out in Form
aforesaid, and also Seven Pound Sixteen Shil-
lings and Eight Pence, (to wit, the Cost of
Increase taxed by the Master) for his Costs
and Charges aforesaid, to the same A B, by
the Court of the said Lord the King now here,
on his Assent of Increase adjudged, which said
 Costs

Costs amounts in the whole to Thirty Pounds King's Bench.
 (summing up the whole) and the aforesaid
 C D in Mercy, &c. (and write Mercy in the
 Margin. But in Ejectment and in Trespass,
 and upon *non est factum* (it is not his Deed) Mercy.
 pleaded there instead of, and the aforesaid Taken.
 C D in Mercy you must say, and let the
 aforesaid C D be taken, &c. and taken in
 the Margin. And thus is your Judgment en-
 tred and finished, and you must remember to
 leave a good Space between it and the Begin- Comittures.
 ning of another Judgment, that you may
 have Room to enter Commitments, which
 is when the Defendant is charged in the
 King's Bench Prison, and to enter Satisfaction
 acknowledged upon the Record, &c.

And Note, That you may enter the Issues
 and Judgments on both Sides the Roll; but
 you must remember not to write too near the
 Bottom of the Roll on the fore-side of it, be-
 cause within an Inch of the Bottom, and
 where the Roll is of full Breadth, you are to
 write the Number of the Roll, and the chief
 Clerk's Name thus, in large Hand and Fi-
 gures, Roll CXXV.

Issues and
 Judgments
 entered.

Ventris.

The same Method for those at the Assizes Note upon a
 in the Country *mutatis mutandis* (changing Trial at the
 where it is to be changed) Assizes.

When you have Occasion to write on the
 Back-side of the Roll, you must begin over
 against the first Line of your Memorandum (or
 It is to be remember'd) on the Fore-side, or
 thereabouts, leaving a Margin as on the other
 Side.

H 4

Next

King's Bench.

Next we will shew how to enter Judgments that are without Tryals.

How to enter Judgments without Trials upon the Rolls.

As said nothing is not informed, acknowledged the Action.

THESE Judgments are entered upon the like Rolls as other; nay, you may enter them upon the very same Rolls, if you will, as is usual, observing to leave Spaces for Committures, Satisfactions, and such Matters as may occasionally follow each Judgment.

Now by way of Repetition, I say,

First make a Margin of an Inch wide, then rule a Line about a Span from the Top of the Roll, then write in large Hand (*Hitherto of the Term of the Holy Trinity, Witness Lord Raymond*) as the Term, and Chief Justice's Name requires.

Next enter your Warrants, as above observ'd thus, (to wit)

For the Plaintiff.

Somerſet ff. A B puts in his Stead C D his Attorney, against E F, (otherwise called, &c. if any,) concerning a Plea of Debt, (as the Action is.)

For the Defendant.

Somerſet ff. E F puts in his Stead G H his Attorney, against A B, concerning a Plea of Debt B (Case, or as the Action is) or thus for the Defendant.

Somerſet ff. The same E F puts in his Stead G H his Attorney, at the Suit of

of A B, concerning the Plea King's Bench.
aforesaid.

Next within half an Inch under, begin to enter Judgments.

And Note, That some of these Judgments without Tryal, are by Default as *Nil dicit* (says nothing) some by Confession of the Party as *Cogn. Acconem.* (acknowledged the Action) some by Assent of the Attorney, as *Non sum Informatus* (&c.) I am not informed.

You seldom have any Thing but the Declaration to enter these by, and the Nature of the Judgment marked upon it, and Costs taxed on the Margin of the Declaration.

See before.

You must begin with a *Memorandum* (It is to be remembered) either of the same Term or of another (as you will see by the Declarations) as is before directed, to the End of the Declaration.

Memorandum.

Then beginning a new Line, write your Judgment.

Nil Dicit (says nothing) In Debt.

AND now at this Day, to wit, Wednesday next after . . . (the first Day of the Term Judgment is entered) that same Term, until which Day the aforesaid C D had Licence (or Leave) to imparle to the Bill aforesaid, and then to answer, &c. before the Lord the King at Westminster, the aforesaid A B came by his Attorney, and the aforesaid C D, altho' to the same Day he was duly required, came not nor any Thing said in Bar, or Prevention of the

Thus with an Impar-

Judgments.

King's Bench. *the Action aforesaid, of the said A aforesaid, by which the same A remains against the aforesaid C thereof undefended, &c. It is therefore considered, that the aforesaid A should recover against the aforesaid C, his Debt aforesaid, and also Thirty three Shillings Four Pence (the Costs taxed) for his Damages which he hath sustained, as well on Account of the Detainer of that Debt, as for his Costs and Charges by him put unto about his Suit in this Behalf, signed 30th of August 1732. the King now here on his Assent adjudged, and Mercy. the aforesaid C in Mercy, &c.*

In the Margin of the Roll, put Judgment signed 30th of August 1732. Mercy.

Note, That sometimes there is no Imparlance, as when the Judgment is confessed, &c. the same Term the Declaration is of, as followeth.

Nil Dicit (says nothing) the same Term, in Debt, without Imparlance.

Nil Dicit says nothing.

AND the aforesaid C came in his proper Person, and defended the Force and Injury, when, &c. and prays Leave to imparle to the Bill aforesaid, and it is granted to him, &c. and upon this a Day is thereof given to the Parties aforesaid, before the Lord the King at Westminster, unto Tuesday (the last Day of the Term) next after that Time, to wit, to the aforesaid C to the Bill aforesaid to imparle, and then to answer, &c. At which Day, before the Lord the King at Westminster, came the aforesaid A by his Attorney aforesaid, and the aforesaid C, altho' at the same Day solemnly required, did not
come

come, nor any Thing, &c. as in the former King's Bench to the End.

Nil Dicit (says nothing) in Case of another Term with a *Memorandum* (It is to be remembred)

AND now to this Day, to wit, Tuesday *Nil Dicit*
 next after . . . (the first Day of *says nothing.*
 the Term Judgment is entered) that same
 Term, until which Day the aforesaid C D,
 had Leave to imparle to the Bill aforesaid,
 and then to answer, &c. before the Lord the
 King at Westminster, came the aforesaid A B,
 by his Attorney aforesaid, and prays that the
 aforesaid C D to the Declaration aforesaid
 may answer; and the aforesaid C D, altho'
 at the same Day solemnly required, did not
 come, nor said any Thing in Bar or Preven-
 tion of the Action of the aforesaid A B, by
 which the same A B remains thereof against
 him undefended; --- for that the aforesaid A B,
 his Damages aforesaid, against the aforesaid
 C D, by Means of the Premisses aforesaid sus-
 tained, ought to recover. But because the
 Court of the said Lord the King now here,
 being unacquainted what Damages the afore-
 said A B, by Means of the Premisses afore- *Writ of*
 said in this Behalf hath sustained. It is there- *Enquiry.*
 fore commanded the Sheriff, that by the Oath
 of twelve honest and lawful Men of his Baili-
 wick, diligently to enquire what Damages the
 aforesaid A B, as well by Means of the Pre-
 misses aforesaid, as for his Costs and Char-
 ges by him put unto about his Suit in this Be-
 half

King's Bench. *half hath sustained, and the Inquisition which he hath thereof taken to the Lord the King at Westminster, on Wednesday next after three Weeks of St. Michael (the Return of the Writ of Enquiry) under his Seal, and the Seals of them by whose Oath he took that Inquisition, he shall send together with the Writ of the Lord the King, to him upon this Account directed, the same Day is given to the same A B there, &c.*

Hereupon a Writ of Enquiry of Damages must be made out, the Form whereof see after, where you may find how to enter Judgments upon this Writ. *At which Day, &c.*

Nil Dicit (says nothing) in case the same Term with the Declaration.

AND the aforesaid E, by B C his Attorney comes and defends the Force and Injury, when, &c. and the aforesaid A, (the Plaintiff) prays, that the aforesaid E may answer to his Declaration aforesaid, upon which the aforesaid E has to Monday next, after Fifteen Days of St. Martin (the last Day of the Term) given to him by the Court of the Lord the King, here to answer, &c. and the same E to the same Day being solemnly required to answer, did not come, nor the same Attorney of the aforesaid E, for him E, any Thing thereof, says in Bar or Preclusion of the aforesaid Action of the aforesaid A, by which the same A remains on this Account against the same E undefended, for that the aforesaid A,
his

his Damages against the aforesaid E, by means King's Bench
of the Premises aforesaid sustained, ought to
recover, But because the Court, &c. (as next
before)

If in Trespass, you must enter as before,
only *mutatis mutandis* (changing where it is
to be changed) and instead of *by Means of the*
Premises aforesaid, you must say, (*by Means*
of the Trespass aforesaid)

In Assault, *by Means of the Trespass and*
Assault aforesaid.

In Assault and Imprisonment, *by Means of*
the Trespass, Assault and Imprisonment aforesaid.

In Covenant, *by Means of the Breach of*
the Covenants aforesaid.

In Assumpsit (or Assumption, or assumed)
by Means of the Not-Performance of the Pro-
misses and Assumptions (Undertakings) aforesaid.

In Ejectment with Damages, say as before,
until undefended, &c. Therefore it is consider-
ed, that the aforesaid A, his Term then to
come, of, and in the Tenements aforesaid, with
the Appurtenances, and his Damages by Means
of the Trespass and Ejectment aforesaid, a-
gainst the aforesaid Defendant, ought to re-
cover; but because the Court of the Lord the
King, now here before the King himself, not
having examined what Damages the aforesaid
A hath sustained, by Means of the Trespass
and Ejectment aforesaid. It is therefore com-
manded the Sheriff, that he cause the aforesaid
A, to have his full Possession of his Term
yet to come, of, and in the Tenements aforesaid

King's Bench. *said, with the Appurtenances without Delay; and as this Writ of the said Lord the King shall be executed to the Lord the King at Westminster, on Tuesday next after . . . thou make to continue. It is also commanded to the same Sheriff, That by the Oath of twelve honest and lawful Men of his Bailiwick, diligently to enquire what Damages the aforesaid A, as well by Means of the Trespass and Ejectment aforesaid, as for his Costs and Charges by him put unto about his Suit in this Behalf hath sustained, and the Inquisition which he thereupon takes to the said Lord the King at Westminster, at the aforesaid Day, under his Seal, and the Seals of them by whose Oath he hath taken that Inquisition, he shall send, together with the Writ of the said Lord the King, on this Account to himself directed, the same Day is given to the aforesaid A there, &c.*

Writ of Enquiry.

If the Judgment be with a Remittit Dam-
pna (a Release of the Damages) say as be-
fore until --- It is therefore considered, (&c.)
until ought to recover, and upon this the aforesaid A freely here in Court releases to the aforesaid B, as well all such like Damages, Costs and Charges, which to the aforesaid A in this Behalf were adjudged, as all Judgments and Executions for the Damages, Costs and Charges aforesaid; therefore the aforesaid C, of the Damages Costs and Charges aforesaid being acquitted, and the same A prays the Writ of the Lord the King to the Sheriff of the County of S, to be directed, for making him to have Possession of his Term aforesaid, yet to come, of, and in the Tenements aforesaid,
with

Judgments.

III

with the Appurtenances, and it is granted to King's Bench.
him returnable, before the Lord the King at
Westminster, on Wednesday next after . . .
the same Day is given to the aforesaid A
there, &c.

Judgment by *Cogn. Acconem.* (confessing the Action) in Debt, without Impar lance.

AND the aforesaid A, by C B his At-Cogn. Accon.
torney, comes, and defends the Force and (confesses the
Injury, when, &c. and says, that he cannot Action.)
deny the Action of the aforesaid E abovesaid,
nor but that he owes to the same E the afore-
said Ten Pounds Fifteen Shillings, (if upon
Bond say) nor but that the Writing obligato-
ry aforesaid, may be the Deed of him A, nor
but he owes to the same E the aforesaid Ten
Pounds Fifteen Shillings, in Manner and Form
like as the aforesaid E above against him
complains. Therefore, it is considered, that
the aforesaid E should recover against the a-
foresaid A his Debt aforesaid, and also Sixty
Shillings (such Costs as are taxed) for his Judgment
Damages which he hath sustained, as well by signed the . . .
Means of detaining that Debt, as for his Costs Day of . . .
and Charges by him put unto about his Suit in 1732.
this Behalf, to the same E, by the Court of
the Lord the King, now on his Assent ad-
judged, and the aforesaid A in Mercy, &c. Mercy.

The

King's Bench.

The Defendant confesses the Damages, to prevent the Expence and Trouble of a Writ of Enquiry.

London ff. **A** B complains of C D, Gent. one of the Filazers of the Court of the Lord the King, present here in Court, in his proper Person, for that, to wit, That whereas the aforesaid C, after the first Day of May, in the Tear of our Lord, One thousand Seven hundred and Five, to wit, the Twenty eight Day of March, in the Tear of our Lord One thousand Seven hundred and Thirty one, at London aforesaid, in the Parish of St. Mary le Bow, in the Ward of Cheap, made his certain Note in Writing, called a Promissory Note, with his proper Hand subscribed, bearing Date, &c. and thereof he brings Suit, &c.

And the aforesaid C, in his proper Person, comes, and defends The Force and Injury, when, &c. and says, That he cannot deny the Action aforesaid, of the aforesaid A, nor but that he the aforesaid C, undertook in Manner and Form like as the aforesaid A above, on this Account against him complains; nor also but that

I acknowledge this Action, and that the Plaintiff sustained Damages to 50 l. so that Execution stays until the 15th Day of April next ensuing. C D, 9 Feb. in the 6th Year of King Geo 3^d, for Costs 6 l. 9th Feb. 1731.

the aforesaid A hath sustained Damages, by Means of not performing the Promises and Undertakings aforesaid, to Fifty Pounds, like as he the aforesaid A above in declaring supposes. And upon this the aforesaid A prays Judgment, and those Damages so acknowledged,

Together with his Costs and Charges by him King's Bench.
 about his Suit in this Behalf sustained to be
 adjudged to him, &c. Therefore it is consider- Judgment
 ed, That the aforesaid A should recover a- signed . . .
 gainst the aforesaid C, his Damages aforesaid, Day of . . .
 to Fifty Pounds above acknowledged, and also
 Six Pounds for his Costs and Charges aforesaid, on his Assent, by the Court of the said
 Lord the King, now here adjudged, which said
 Damages amount in the whole to Fifty six
 Pound; and the aforesaid C in Mercy, &c. Mercy.

Cogn. Accon. by Admin. (Administrators confess the Action.)

AND the aforesaid A B and C D, by E F
 their Attorney, come and defend the Force
 and Injury, when and where, and as the Court
 shall think fit, and say, that they cannot
 deny but that the Writing obligatory aforesaid, may be the Deed of the aforesaid G, nor
 but that they detain from the aforesaid H the
 aforesaid One hundred Pounds, in Manner and
 Form like as the aforesaid H above against
 him complains. Therefore it is considered, that
 the aforesaid H should recover against the
 aforesaid A and C his Debt aforesaid, and Judgment
 also Three Pound Ten Shillings for his Damages which he hath sustained, as well on Account of the Detainer of that Debt, as for his Costs and Charges by him put unto about his 1732.
 Suit in this Behalf; by the Court of the Lord
 the King here; on his Assent adjudged of the
 Goods and Chattels which were the aforesaid
 G's at the Time of his Death, in the Hands
 of them A and C to be administered, if so much
 they have in their Hands; and if they have not

King's Bench. *not so much, then the Damages aforesaid to be levied of the proper Goods and Chattels of them A and C, and the same A and C in Mercy.* *Mercy, &c.*

If the Defendant hath pleaded *Non est factum* (it is not his Deed) and Issue thereupon, and after the Defendant is willing to confess the Action, then enter it thus.

See after in Common Pleas.

At which Day before the Lord the King at Westminster, the Parties aforesaid came by their Attorney aforesaid; and upon this the aforesaid A having withdrawn his Plea aforesaid, by him above pretended, says, That he cannot deny the Action of the aforesaid E above said, nor but that he owes, &c. (as first above)

See the Declaration upon a Mutatus.

Judgment by *Non sum Informatus* (I am not informed) without an Imparlance in Debt. See after with an Imparlance.

Non Inform.

AND the aforesaid B, by C his Attorney, comes and defends the Force and Injury, when, &c. and the aforesaid A prays, that the aforesaid B may answer to his Declaration aforesaid, upon which the aforesaid Attorney of the aforesaid B, saith, that he is not informed by the same B of any Answer to be given for the same B to the same A, in the Premisses, nor hath he any other Thing to say thereof, in Bar or Preclusion of the Action of the aforesaid A, by which the same A remains thereof

thereof against the aforesaid B undefended, &c. King's Bench.

o—o Therefore it is considered, That the aforesaid A should recover against the aforesaid B his Debt aforesaid, and also Sixty and three Shillings (the Costs usually allowed) for his Damages which he hath sustained, as well by Means of the Detention of that Debt, as for his Costs and Charges by him put unto about his Suit in this Behalf, to the same A, by the Court of the said Lord the King now here, on Day of November 1732. Signed . . . Mercy.

See after for one with an Impar lance.

Note, Costs upon a Bond only Fifty three Shillings, because it is supposed the Plaintiff may take more Cost out of the Penalty.

Write as above, until — undefended, &c. Not informed for that the aforesaid A his Damages againsted in Case upon the aforesaid B, by Means of the not performing the Promises and Undertakings aforesaid, ought to recover. But because the Court of the said Lord the King now here before the King himself, not being apprised what Damages the aforesaid A, by Means of the not performing the Promises and Undertakings aforesaid in this Behalf hath sustained. It is therefore commanded the Sheriff, That by the Oath of twelve honest and lawful Men of his Bailiwick, diligently to enquire what Damages, &c. as in Nil Dicit (says nothing) in Case only, instead of by Means of the Premises, say, by Means of the not performing the Promises and Undertakings aforesaid, &c.

King's Bench. If in 'Trespas then as next above, only *mutatis mutandis* (changing as is to be changed) say by *Means of the Trespas* aforesaid.

If in 'Trespas and Assault, say, on Account of the *Trespas and Assault* aforesaid.

If in 'Trespas, Assault and Imprisonment, say, by *Means of the Trespas, Assault and Imprisonment* aforesaid — and so of the rest.

Non Inform.
with an Im-
parlance.

Note, If your Non Inform. be of another Term with an Imparlance, you must begin as in others.

— **A** ND now at this Day, to wit, &c. as before (unto) and the same B defends the Force and Injury, when, &c. and upon this the aforesaid A prays, that the aforesaid B may answer to his Declaration aforesaid, &c. upon which the aforesaid Attorney of the aforesaid B, says, that he is not informed by the same B, &c. (as before)

Note, By the Act for Amendment of the Law 4 and 5 Ann. It is enacted, that all Statutes of* Jeofails shall be extended to Judgments, which shall be at any Time entred upon Confession, *Nil dicit* or *Non sum Informatus* in any Court of Record, and no such Judgment shall be reversed, nor any Judgment upon any Writ of Enquiry of Damages executed thereon be staid and reversed, for, or by reason of any Imperfection, Omission, Defect, Matter or Thing whatsoever, which would have been aided and cured by any of the said Statutes of Jeofails, in case a Verdict of twelve Men had been given in the said Action or Suit,

18 Eliz. c. 14.

so

so as there be an original Writ or Bill, and King's Bench Warrants of Attorney duly filed, according to the Law as is now used.

We will next proceed to write of Execution upon the aforefaid Judgments, and upon Judgments by Trial and Verdict.

But first we will see a Writ of Enquiry of Damages, where the Judgment is without Trial.

Note, The Attornies of the King's Bench, when they carry in their Entries, docquet them thus, on a Sheet of Paper in plain Hand, and after having taken their Numbers for the Rolls from the Nisi prius Office.

THE Entries of A B, Gentleman, one of the Attornies of the Court of the Lord the King, before the King himself, &c. of the Term of the Holy Trinity in the Sixth Year of the Reign of George the Second, now King of Great Britain, &c.

Witness Lord Raymond.

Dorset ff. Says nothing in Debt upon
an Obligation between L M, Af-
signee of W B, Esq; late Sheriff
of the County of S, Plaintiff, and
S B, otherwise called S B of W,
in the County of S, Gent. as well
for 4000 l. Debt as 46 s. for
Costs. } Roll 97.

King's Bench.

London ff. No Prosecution in Debt
for want of a Replication be-
tween R P, Widow, Administra-
trix of S P, Plaintiff, and W
C, a Prisoner, Defendant. } Roll

Somerset ff. Not informed in Debt,
on Money lent, between T C,
Plaintiff, and J A, as well for
500 l. Debt, as 63 s. for Costs. } Roll

Devon ff. The Entry of a Scir.
Fa. in Debt between C S, Plain-
tiff, and H L, Defendant, as
well for 155 l. Debt, as 63 s.
for Costs. } Roll

Somerset ff. Not guilty in Trespass
between A B, Plaintiff, and D
E, Defendant. } Roll 106.

Glocester ff. Says nothing in Debt
for 100 l. on an Obligation be-
tween A B, Plaintiff, otherwise
called, &c. D E, &c. and for
. . . . Damages and Costs. } The same
Roll.

And so of the Rest.

Writ of Enquiry of Damages.

Not to be
signed at the
Office but
sealed.

GEORGE the Second, by the Grace of God,
of Great Britain, France and Ireland,
King, Defender of the Faith, &c. to the Sher-
riff of Somerset, Greeting: Whereas A B,
lately

lately in our Court before us at Westminster, King's Bench.
 by Bill without our Writ, had impleaded C D
 in the Custody of the Marshal of our Mar-
 shalsea before us being for that, to wit, That ^{Nore, If it}
 whereas the aforesaid C D, the first Day of ^{is in the De-}
 January, in the fifth Year of our Reign, &c. ^{claration, in}
 and so on as it is in the Declaration Word for ^{the Year of}
 Word, only saying instead of, in the Year of ^{our Lord}
 the Lord the now King, in the fifth Year of ^{1732. insert}
 our Reign, &c. as in the Declaration, till ^{it in the Writ,}
 you come to, to the Damage of him A ^{and not the}
 Pounds, as he hath said, and thereupon hath ^{Words, in the}
 brought Suit, &c. and in such Manner in our ^{Year of our}
 same Court before us, it was proceeded that the ^{Reign. If a-}
 aforesaid A ought to recover his Damages a- ^{gainst an Ex-}
 gainst the aforesaid C, by Means of the Pre- ^{ecutor (against}
 mises aforesaid. But because our Court before ^{the aforespoken}
 us not being acquainted what Damages the ^{tor, by Means}
 same A, by the Occasion aforesaid, hath sus- ^{of the Premis-}
 tained. Therefore we command thee, that by ^{ses aforesaid,}
 the Oath of twelve honest and lawful Men of ^{of the Goods}
 thy Bailiwick, diligently to enquire what Da- ^{and Chattels}
 mages the same A hath sustained, as well ^{which were}
 the Account aforesaid, as for his Costs and ^{Testator) at}
 Charges by him put unto about his Suit in ^{the Time of}
 this Behalf, and the Inquisition which thou ^{his Death, in}
 shall thereof make, thou cause to continue to ^{on the Hands of}
 us at Westminster, on Wednesday next after ^{him C.}
 three Weeks of St. Michael (the Day of the ^{To be ad-}
 Return) under thy Seal, and the Seals of them ^{ministrated, if}
 by whose Oath thou takest that Inquisition, and ^{he has so much}
 have then this Writ. Witness Lord Raymond, ^{in his Hands}
 at Westminster, the 28th Day of June, in the ^{he ought to}
 Sixth Year of our Reign. ^{recover. but,}
^{&c. as herein.}

Ventris.

The

King's Bench.

The Form of a *Subpæna*, to testify upon this Writ of Inquiry for the Plaintiff's Witnesses.

You sign and seal this Writ.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. J S, T W, (naming your Witnesses. You may not insert more than four) Greeting : *We command you, and every of you, that staying, or (forbearing) all and singular Business and Excuses whatsoever you be, and every one of you be, in your proper Persons, before T B, Esq; Sheriff of the County of S, or his Sub-Sheriff, on Wednesday the . . . Day of October next ensuing at the Inn of one J T, called the Star-Inn in L, in the County aforesaid, there to testify all and singular those Things according to your Information and Knowledge, which ye know, or any of you knoweth in a certain Action in our Court, before us now pending, between H K, Plaintiff, and H H, Defendant*

* Of a Plea of Breach of Covenant, in which said Plea, our certain Writ of Inquiry of Damages to the same, our Sheriff of S, by us out of our Court before us, was sent and directed before the same Sheriff in Form of Law, then and there to be executed; and this ye are in no wise to fail, nor must any of you fail, under the Penalty of 100 l. Witness Lord Raymond, &c.

* Of a Plea of Trespass, Trespass on the Case, &c. as the Case is.

Ventris.

Upon

King's Bench,

. Upon this you must fill up a Ticket to leave with each Witness.

Enquiry & Spa'.

BY Virtue of a Writ of *Subpæna* to you directed, and herewith shewn unto you, you are personally to be and appear before R. B, Esq; Sheriff of the County of S, or his Under-Sheriff, on *Wednesday* the 12th Day of this Instant *October*, at Two of the Clock in the Afternoon, at the House of Mr. J T, commonly called the *Star-Imm* in L, then and there to testify the Truth according to your Knowledge, upon a Writ of Enquiry of Damages, to be then and there executed in a certain Cause now depending between H K, Plaintiff, and H H, Defendant, in a Plea of Covenant broken on the Part of the Plaintiff, and this you are not to omit upon Pain of 100 l. Dated the 3d of *October* in the Sixth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, &c. and in the Year of our Lord, 1732.

The Ticket.

Note also, That you must first give the Defendant or his Attorney Notice of your Intention to execute the Writ of Enquiry after this Manner.

Mr. N. — A against B, in Case.

TAKE Notice of the executing a Writ of Enquiry of Damages in this Cause, on the tenth Day of this Instant *August*, at Ten

Note, You must always give eight Days Notice of your executing the of Enquiry.

Of Arresting Judgments.

King's Bench. of the Clock in the Forenoon of the same Day,
at the Court-house at *Westminster* (if it be
in *Middlesex* and Term Time, otherwise you
must name the Time, the Sign of the House,
and the Town,

From your Servant,

August 2,
1732.

H. Y.

The Entry and Continuance of the Judgment on the Roll upon this Writ of Enquiry. *See before.*

A T which Day before the Lord the King at Westminster, came the aforesaid A B by his Attorney aforesaid, and the Sheriff, to wit, P M, Knight, Sheriff of the * County of S, aforesaid, returned a certain Inquisition before him at the Castle of O, in the County of S aforesaid, taken the Tenth Day of July, in the Sixth Year of the Reign of the Lord George the Second, now King of Great Britain, &c. by the Oath of twelve honest and lawful Men, by which it is found that the aforesaid A B hath sustained Damages by Means of the Premises aforesaid, over and above his Costs and Charges by him put unto about his Suit in this Behalf, to One hundred Pound, and for those Costs and Charges, to Six-pence. Therefore it is considered, That the aforesaid A should recover against the aforesaid C, the Damages aforesaid, by the Inquisition aforesaid above found, and also Fourteen Pound Nineteen Shillings and Six Pence, for his Costs and Charges by him put unto about his Suit

* If in London, say City of London.

Guildhall of the City of London, situate in the Parish of St. Laurence in the Old Jury, in the Ward of Cheap of the same City.

Of Arresting Judgments.

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in this Behalf, to the same A, by the Court King's Bench.
of the said Lord the King now here at his
Request of Increase adjudged, which said Da- Increase.
mages amount in the whole to One Hundred
and Fifteen Pound, and the aforesaid C in
Mercy, &c.

If it be in Trespass, you say may be taken,
&c.

Of Arresting Judgments.

BY the Course of the Court, after a Ver-
dict there must be a Rule given (which
is out in four Days) before the Plaintiff can
enter his Judgment or take out Execution,
which Time is given to the Defendant to
move in Arrest of Judgment.

If the Cause be tried within Term, the
Rule may be given the Day after the Trial,
the *Postea* being indorsed and marked.

If the Sitting after the Term, or at the
Assizes, the Rule cannot be given until the
first Day of the ensuing Term.

And Note, That by the Rules of the Court,
no Counsel ought to move any Thing in Ar-
rest of Judgment, except the Roll whereon
the Judgment is entered, or the *Postea* be in
Court.

And it is said to be a sufficient Matter to
arrest a Judgment (when sufficient Notice of
the Trial was not given according to the
Course of the Court (so as to obtain a Rule
for a new Trial upon the old Pleadings.

Also one may speak in Arrest of Judg-
ment on a *Nihil dicit* (a Default) after
the

King's Bench. the Writ of Enquiry of Damages (upon which Writ the like Rule is to be given as upon a *Postea*.)

And no Judgment ought to be entered until the Costs be taxed, and the Judgment signed by the Secondary of the Office.

After Judgment by Confession or *Nil Dicit* (Default) entered, or after a Verdict at the Assizes, and Judgment thereupon, the Writs of Execution are made out, which are of three Sorts.

Of Executions.

1. Either against the Body, as a *Capias ad Satisfaciendum*. (a Writ to be satisfied.)
2. Or against the Goods, as a *Fieri Facias* (thou cause to be made.)
3. Or against the Lands, as an *Elegit*.
The several Forms whereof follow.

A Ca. Sa. in Debt.

You only
seal this Writ.
If there be
an Alias Dicit.
you must re-
cite it.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. to the Sheriff of S, Greeting: We command thee, that thou take C D, if he shall be found in thy Bailiwick, and him safely keep, so that thou hast his Body before us at Westminster, on Wednesday, &c. (the Day of the Return) to satisfy to A B of a Debt of Twenty Pounds, (the Debt in the Declaration) which the same A B hath lately recovered against him in our Court before us, and also of Fifty Shillings (the Costs) which to the same A B, in our same Court before us were adjudged for his Damages which he hath sustained, as well by Occasion of the Detention of that Debt, as for
his

his Costs and Charges by him about his Suit in King's Bench.
that Particular appointed, whereof the afore-
said C D is convicted, as is apparent to us
of Record, and have there then this Writ.
Witness Lord Raymond at Westminster, the
28th Day of June, in the Sixth Tear of our
Reign. Ventris.

Note, That if the Action was by way of
Original, you must make your Ca Sa return-
able before us, in — &c. wheresoever we
shall then be in England.

Ca Sa in Case, upon Assumpsit.

GEORGE the Second, by the Grace of God,
 (&c. as before) to be satisfied unto A B,
 of Twenty Pounds for his Damages which he
 hath sustained, as well by Occasion of the not
 Performance of certain Promises and Under-
 takings to the same A by the aforesaid B late-
 ly made, as for his Costs and Charges by him
 about his Suit (as before)

Ca Sa in Trespass, upon the Case in ge-
neral.

GEORGE the Second, by the Grace of God,
 of Great Britain, France and Ireland,
 King, Defender of the Faith, &c. to the She-
 riff of D, Greeting: We command thee, that
 thou take C D, if he shall be found in thy Ba-
 liwick, and keep him safely, so that thou hast
 his Body before us at Westminster on Wed-
 nesday (the Day of the Return) to be satis-
 fied unto A B of Twenty Pounds for his Da-
 mages

King's Bench. *damages which he hath sustained, as well by Occasion of a certain Trespass upon the Case to the same A, by the aforesaid C, lately brought in as for his Costs and Charges by him about his Suit in this Behalf, appointed, &c. (as before.)*

In Trespass and Assault.

As well by Occasion of a certain Trespass and Assault by him C, upon the same A lately done, as for his Costs and Charges, &c.

In Trespass only.

To be satisfied unto A B of Twenty Pounds for his Damages which he hath sustained, as well by Occasion of a certain Trespass to the same A by the aforesaid C, lately brought in as for his Costs, &c. (as before.)

In Covenant, say,

As well by means of certain Covenants broken to the same A, by the aforesaid C lately made, as for the Costs and Charges, &c. (as in others.)

In Ejectment, say,

As well by Occasion of a certain Trespass and Ejectment to the same A, by the aforesaid C, lately brought in as for the Costs, &c. (as in others.)

Ca Sa in several Damages in Trespas.

GEORGE, by the Grace of God, (&c.) to the Sherriff of S Greeting, We Command thee, That thou take C D, late of . . . and E F, late of . . . &c. to satisfy unto A B two Shillings for his Damages, which he had by Occasion of the taking and carrying away of six Sheep of the same A; and also, the same C and E, to satisfy unto the same A of six Pounds, which were adjudged to the same A in our Court before us, at Westminster, for his Costs and Charges, by Occasion of the Trespas aforesaid to the same A, by the aforesaid C and E by Force of Arms, and against our Peace at G in thy County brought in, whereof they are convicted, as appears to us of Record, and have, &c.

Testat Ca Sa in Debt.

GEORGE by the Grace of God of Great Britain, France and Ireland King Defender of the Faith, &c. to the Sheriff of London Greeting; Whereas, we had lately commanded our Sherriff of S. that he should take C D, if he were to be found in his Bailiwick, and him safely to keep so, that he might have his Body before us at Westminster at a certain Day now past, to satisfy to A B of a Debt of Twenty Pounds, which the same A B hath lately recovered against him in our Court before us, and also of Fifty Shillings, which the same A B in our same Court before us, were adjudged for his Costs which he hath sustained

If the Declaration be laid in London, or any County, and the Cause tryed there, and the Defendant not being to be found there, then a Ca Sa as before is awarded to the Sheriff of London, &c. who returned non est inventus (he is not to be

found) and thereupon this Writ is made out, and directed to the Sheriff of the County, where the Defendant sculks.

King's Bench. *sustained by reason of the — Detention of that Debt; as for his Costs and Charges by him laid out about his Suit in this behalf appointed, whereof the aforesaid C D is convicted, as it plainly appears to us of Record: And our said Sherriff of S at that Day returned to us, that the aforesaid C ~~were~~^{was} not to be found in his Bailiwick, upon which on the Behalf of the aforesaid A. It is sufficiently attested in our Court before us, that the aforesaid C, hides and stoles in thy County; therefore, We command thee, that thou take him, if he shall be found in thy Bailiwick, and him safely keep so that thou hast his Body before us at Westminster on Wednesday next after —, to be satisfied unto the aforesaid A of the Debt and Damages aforesaid, and have then there this Writ, &c.*

Ca sa, against the Bail in Debt.

GEORGE the Second, (&c.) *We Command thee, That thou take C D of, &c. E F of, &c. Manucaptors of G H, if (&c. as before) to satisfy unto a, A B of a Debt of Two hundred Pounds, and also of Four Pounds for his Damages A (&c. as before for Debt) whereof the same is convicted as plainly appears to us of Record, and from whence it is considered in our same Court at Westminster before us, that the aforesaid A, may have his Execution against the aforesaid C and E, for the Debt and Damages aforesaid, according to the Force, Form, and Effect, of a certain Recognizance by them C and E in our Court before us for the*

The aforesaid G, at the Suit of the aforesaid A, King's Bench.
acknowledged as it likewise appears to us of
Record, and have, &c. (as in others)

Note, there must be a Ca Sa against the
Defendant, and a *non est inventus* (he is not
to be found) returned and filed before the
sueing forth this Writ against the Bail, and
it must be by the Sheriff of the County *See after*
where the Action is laid. *Scir. Far.*

Ca Sa against the Plaintiff, for Costs up-
on a Non-suit.

That thou take A B, &c. to satisfy unto DE, according to the Form of the Statute, *If you take*
in the like Case thereof lately made, and pro- *out a Ca Sa,*
vided of five Pounds, to the same D for *and imprison*
his Costs and Charges, in a certain Ac- *the Defendant*
tion in our Court before us against him D, at *thereupon, you*
the Suit of the aforesaid A of a Plea of Debt, *cannot have a*
(or Trespass on the Case, as the Case is) *Fi Fa, or E-*
adjudged whereupon the same A, afterwards *legit.*
that Action hath not prosecuted, and have
there then, &c.

Ca Sa against the Plaintiff for Costs after
a Verdict.

To satisfy unto DE of thirty Shillings,
to the same D according to the Form of
the Statute thereof lately made, and pro-
vided for his Costs and Charges by him, about
his Defence in a certain Action of Debt (as
the Action is) at the Suit of the aforesaid A,
K in

King's Bench. *in the Court aforesaid adjudged, and have then there this Writ, Witness, Lord Raymond, &c.*

Note, That if you make out a Ca Sa, after a Scir. Fa. hath issued, then after the Words, it appears to us on Record, you must add — ; and whereupon in our same Court before us. It is considered, that the aforesaid A, may have Execution against the aforesaid D, for the Debt and Damages aforesaid, and have there then this Writ, &c.

Ca Sa for an Administrator.

To satisfy unto A B, Gentleman, Administrator of all, and singular the Goods and Chattels, Rights, and Credits, which were C D, lately deceased, who died Intestate of a Debt of Ten Pounds, and also, (&c.) for Costs (as in others,) as appears to us of Record; and whereupon in our same Court before us, it is considered, That the aforesaid A may have his Execution, and have there then this Writ, &c.

For an Executor.

To satisfy unto A B, Gentleman, Executor of the Last Will and Testament of C B, deceased, for a Debt, &c. as before.

Fieri

Fieri Facias.

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King's Bench.

Fieri Fac. in Debt.

GEORGE the Second, by the Grace of God, ^{Not to be signed at the}
of Great-Britain, France, and Ireland ^{King's Bench}
King, Defender of the Faith, &c. to the Sheriff of S, Greeting, We Command thee, That of ^{Office, but}
the Goods and Chattles of C D, (if on a Bond, ^{only sealed.}
say otherwise named, &c. as in the Bond) in
thy Bailiwick thou Cause to be made One hun-
dred Pounds, which A B lately in our Court
before us at Westminster, hath recovered a-
gainst him of a Debt; and also, (the Costs) ^{Sixty three}
which to the same A, were lately in our Court ^{Pounds usual}
before us adjudged, as well for his Damages ^{Costs on Mo-}
which he hath sustained, by Occasion of the De- ^{ney lent, and}
tention of that Debt; as for his Costs and ^{Fifty three}
Charges by him about his Suit in this Behalf ^{Pounds on a}
appointed, whereof the same C D is convic- ^{Bond.}
ted, as it appears to us of Record, and have
that Money before us at Westminster on Wed-
nesday next, after fifteen Days of Easter, to
be rendered unto the aforesaid A, of his Debt
and Damages aforesaid, and have there this
Writ, &c.

If you first Sue out a *Fieri Facias* against
the Defender's Goods, and levy Part thereof,
and the whole, then you may afterwards have
a *Ca Sa* against the Defendant's Body, or a se-
cond *Fi. Fa.* or an *Elegit* for the Residue;
but if you first imprison upon a *Ca Sa*, you
cannot have a *Fi. Fa.* or an *Elegit*.

K 2

Fieri

Fieri Facias.*Fieri Fa.* in Case upon Promise.

For his Damages which he hath sustained, as well by Occasion of the not performing of certain Promises and Undertakings, to the same A by the aforesaid C, lately made as for his Costs and Charges, &c. as before unto — for his Damages which he hath sustained, as well by Occasion of the Breach of certain Covenants, lately made between the aforesaid C and the aforesaid A, as for his Costs and Charges by him, about his Suit in this Behalf appointed, &c. as before.

In Ejectment.

For his Damages which he hath sustained, as well by Occasion of a certain Trespass, and Ejectment of his the aforesaid A's Farm, by the aforesaid C with Force of Arms, and against our Peace done at E in thy County.

In Trespass.

For his Damages which he hath sustained, as well by Occasion of a certain Trespass upon the Case to the same A, by the aforesaid C, lately done as for his Costs and Charges, &c. expended; if for the Defendant, say, for Costs and Charges, &c. expended about his Defence in a certain Action of Trespass, at the Suit of the aforesaid A, &c.

Against an Administrator.

That of the Goods and Chattels which were of A B, deceased, at the Time of his Decease, in the Hands and Custody of E F, Administrator of all, and singular the Goods and Chattels, Rights, and Credits, which were the aforesaid C at the time of his Death, who died Intestate, &c. being in thy Bailiwick, thou Cause to be made One hundred Pounds, which A B, &c. whereof he is convicted, as appears unto us of Record, if he hath so much in his Hands, and if he hath not so much in his Hands, then the Damages aforesaid to be levy'd of the proper Goods and Chattels of him E F, and have that Money, &c.

Note, If it be against an Executor, you say, That of the Goods and Chattels which were A B, deceased, lately called, &c. at the Time of his Death, in the Hands and Custody of C D, Executor of the Last Will and Testament of the aforesaid A in thy Bailiwick, thou Cause to be made.

Note, There may be a Testatum Fieri Pa. to another County, where the Defendant hath not Goods and Chattels enough in the County, where the Action is laid to satisfy the Execution, but hath sufficient in the other.

Fieri

King's Bench.

Fieri Fa. against the Plaintiff for Costs to the Defendant.

That of the Goods and Chattels of A B in thy Bailiwick, thou cause to be made ten Pounds which were lately adjudged to C D, according to the Form of the Statute in the like Case lately made, and provided in our Court before us, for his Costs and Charges, about his Defence in a certain Action of Trespass, (Trespass on the Case, &c.) at the Suit of the aforesaid A, and have that Money at Westminster on Wednesday next, after three Weeks of St. Michael next ensuing, to be rendered unto the aforesaid C, for his Costs and Charges aforesaid, and have, (&c. as in others.)

A Testatum Fieri Fac. in Debt.

GEORGE the Second, by the Grace of God, &c. the Sheriff of B, Greeting, *Whereas we had lately commanded our Sheriff of S, that of the Goods and Chattels of C D in his Bailiwick, he should cause to be made One hundred Pounds, which A B lately in our Court before us, hath recovered against him of a Debt; and also, (the Costs) which to the same A, lately in our same Court before us were adjudged for his Damages which he hath sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him about his Suit in this Behalf appointed, whereof he is convicted, as appears*
unto

unto us of Record, and that he should have King's Bench.
that Money before us at Westminster, at a
certain Day now past, to be rendered unto the
aforesaid A B for the Debt and Damages a-
foresaid; and our said Sheriff of S. at that
Day to us returned, that the aforesaid C had
no Goods or Chattels in his Bailiwick, where-
of he could cause to be made that Money; up-
on which on the Part of the aforesaid A, in
our same Court before us, it is sufficiently at-
tested, that the aforesaid C hath Goods and
Chattels sufficient in thy Bailiwick, whereof
thou can cause to be made the Money aforesaid;
therefore, We Command thee, That of the Goods
and Chattels of the aforesaid C in thy Baili-
wick, thou cause to be made the aforesaid One
hundred Pound of the Debt, and (the Costs)
for the Damages aforesaid, and have that
Money before us, at Westminster on Saturday
next, after the Morrow of the Lords Ascension,
to be rendered unto the aforesaid A B for his
Debt and Damages aforesaid, in Form afore-
said, and have there then this Writ, Witness,
&c.

If you take out a *Ca. Sa.* or *Fi. Fa.* and
they take no Effect, you may have an *E-*
legit.

Elegit in Debt.

GEORGE by the Grace of God, of Great-
Britain, France and Ireland, King, De-
fender of the Faith, &c. to the Sheriff of S
Greeting, Whereas A B, lately before us at
Westminster, by Bill without our Writ, and
K 4 by

For signing
at the Office.
you say 1 s 8 d
fealing 7 d.

King's Bench. by the Judgment of the same Court, hath re-

An Elegit is covered against C D One hundred Pound of Debt, and Forty Shillings for his Damages which he hath sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him about his Suit in his Bench, and half appointed, whereof the same C D, is convicted, as it appears to us of Record, and because the aforesaid A came into our Court before us, and hath elected to have delivered to him all the Goods and Chattels of the aforesaid C, besides the Oxen and Beasts of his Plough, and likewise a Moiety of all and singular the Lands and Tenements of the aforesaid C in thy Bailiwick, to be holden to him and his Assigns, (as his free Tenement) according to the Form of the Statute on this Account made, and provided until the Debt and Damages aforesaid shall be thereof fully levied; therefore, We Command thee, that to the aforesaid A, all the Goods and Chattels of the aforesaid C in thy Bailiwick, besides the Oxen and Beasts of his Plough; and likewise the Moiety of all the Lands and Tenements of the aforesaid C in thy Bailiwick, of which the aforesaid C, . . . Day of . . . in the sixth Year of our Reign, on which Day the Judgment aforesaid was obtained, or ever after was seized to the aforesaid A without delay, thou cause to be delivered by reasonable Value and Extent, the Goods and Chattels aforesaid to be holden to him as his own proper Goods and Chattels, and also to hold a Moiety of the Lands and Tenements aforesaid, as his own free Tenement, to him and his Assigns, according to the Form of the Statute aforesaid, until the Debt and Damages aforesaid.

for all the Debt, and Forty Shillings for his Damages which he hath sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him about his Suit in his Bench, and half appointed, whereof the same C D, is convicted, as it appears to us of Record, and because the aforesaid A came into our Court before us, and hath elected to have delivered to him all the Goods and Chattels of the aforesaid C, besides the Oxen and Beasts of his Plough, and likewise a Moiety of all and singular the Lands and Tenements of the aforesaid C in thy Bailiwick, to be holden to him and his Assigns, (as his free Tenement) according to the Form of the Statute on this Account made, and provided until the Debt and Damages aforesaid shall be thereof fully levied; therefore, We Command thee, that to the aforesaid A, all the Goods and Chattels of the aforesaid C in thy Bailiwick, besides the Oxen and Beasts of his Plough; and likewise the Moiety of all the Lands and Tenements of the aforesaid C in thy Bailiwick, of which the aforesaid C, . . . Day of . . . in the sixth Year of our Reign, on which Day the Judgment aforesaid was obtained, or ever after was seized to the aforesaid A without delay, thou cause to be delivered by reasonable Value and Extent, the Goods and Chattels aforesaid to be holden to him as his own proper Goods and Chattels, and also to hold a Moiety of the Lands and Tenements aforesaid, as his own free Tenement, to him and his Assigns, according to the Form of the Statute aforesaid, until the Debt and Damages aforesaid.

aforesaid shall be thereof levied, and in what King's Bench.
manner this our Writ thou shall have executed
to us at Westminster, on Wednesday, in three
Weeks after St. Michael, you shall cause to
continue under your Seal, and the Seals of them
by whose Oath you shall make that Extent and
Appraisement, and have there then this Writ.
Witness Lord Raymond at Westminster, &c.

Note, That if you execute an Elegit and
file it, you are barred from taking out any
other Execution from that Judgment after-
wards, unless evicted. See Stat. 32. H. 8.
Cap. 5.

If upon this Writ Goods only are levied
(because of no Lands) and they are not
enough, you may have any other Writ, this
being in Effect but a Fi Fa.

Quer. If Lands be extended and not suf-
ficient.

Elegit in Debt for a Residue after a Fier.
Fac.

GEORGE the Second, &c. *Whereas A B,*
late in our Court (reciting the Recovery
as before until) as it appears to us of Re-
cord, and whereas thereupon by our Writ, we
had lately commanded that of the Goods and
Chattels, &c. (reciting the whole Writ of
Fi Fa. and the Return) and afterwards the
aforesaid A came into our Court (as before
until) according to the Form of the Statute in
the like Case thereof made and provided, until
Twenty

King's Bench. *Twenty Pounds Residue of the Debt and Damages aforesaid, he shall thereof fully levy. We therefore command thee, that all the Goods, (&c. as before until) or ever afterwards was seized by the reasonable Price and Extent to hold, (&c. as before) according to the Form of the Statute thereof made and provided until he shall have thereof levied the aforesaid Twenty Pounds, the Residue of the Debt and Damages aforesaid, and like as, (&c. as before.)*

Elegit after an *Elegit*, upon Discovery of more Lands.

GEORGE the Second, &c. *Whereas A B, lately in our Court before us at Westminster (&c. reciting the first Writ unto) until the Debt and Damages aforesaid, thou shall thereof have levied, and after what Manner our Precept thou shall have executed, plainly make it appear to us at Westminster on Friday, &c. and thou at that Day hath returned to us a certain Inquisition taken before thee at the Castle of E (such a Day) last past, by the Oath of Twelve, &c. by which being found, that the aforesaid C was seized in his Demesne as of Fee, at the Time of the Recovery of the Debt aforesaid of the Manor of — (&c. reciting the Return of the Inquisition) and because it is now given to us to understand, that the aforesaid C, at the Time of obtaining the aforesaid Judgment and afterwards, had and now hath divers other Manors, Lands and Tenements, besides those which in the Return before specified are mentioned, of which*
said

said other Manors, Lands and Tenements, be King's Bench also ought to have a Moiety in Execution for the sooner Recovery of the Debt aforesaid, Wherefore the same A hath humbly prayed us, that according to the Exigency of Right he may be so enabled to have. Therefore we command thee, that as well the other Moiety of all other the Manors, Lands and Tenements of him C, as a Moiety of them which in Execution for Payment of the Debt aforesaid, being before extended in thy Bailiwick, likewise in the Presence of the aforesaid C to be provided for thereupon, if he will be interested, thou cause to be delivered to the aforesaid A, by a reasonable Price and Appraisement to hold to the same A, and his Assigns as his free Tenement, until the aforesaid One Hundred Pound shall be fully levied, and forasmuch that moreover what thou shall do therein, send to us at Westminster — Day of — under thy Seal and the Seals of them by whose Oath you shall make that Extent and Appraisement together with this Writ. Witness Lord Raymond at Westminster the 28th Day of June, in the Sixth Year of our Reign.

Ventris.

Writ of Possession.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. to the Sheriff of S: Greeting: Whereas A B lately in our Court before us at Westminster, by Bill without our Writ, and by the Judgment of the same Court hath recovered against C D his

Term

Writ of Possession.

King's Bench. *Term yet to come, of and in Three Messuages, Twenty and four Acres of Land (&c.) with the Appurtenances situate (&c.) which one E F, the third Day of, (&c.) in the Tear (&c.) (as in the Declaration) to the same A demised for a Term of Tears, which hath not yet past, to wit, from the Thirtieth Day of, &c. unto the full End and Term of Seven Tears, from thence next following, and fully to be compleat and ended, by Virtue of which said Demise, the same A in the aforesaid three*

On this Writ the Sheriff may break open Doors, give Possession. *Messuages, &c. with the Appurtenances entered, and was thereof possessed, until the aforesaid C afterwards, to wit, the same third Day, &c. in the Tear, &c. aforesaid, by Force and Arms, &c. in the aforesaid three Messuages, with the Appurtenances in and upon the Possession of the aforesaid A thereupon entered, and him A, from his holding aforesaid, (his Term aforesaid not being yet ended) ejected, drove out and amoved; Therefore, we command thee, that thou make the aforesaid A to have Possession of his Term aforesaid, yet to come, of and in the aforesaid three*

If contain- ing more Acres than in the Declaration, it is erroneous. *Messuages, and Twenty four Acres of Land, with the Appurtenances, &c. and in what Manner thou shalt have executed this our Writ, make certainly appear to us at Westminster, (the Return) and have there then this Writ. Witness, &c.*

Thus you have seen the Forms of several Writs of Execution, after Verdict or Judgment.

Next follow some other Writs and Proceſs, which

which you may often have Occasion to make King's Bench out, viz.

An Attachment of Privilege.

GEORGE the Second, by the Grace of God, By Stat. 12. Geo. I. Affidavit must be made that the Cause of Action is 10 l. or above to hold the Defendant to Bail. If bailable insert the Accetiam.
to the Sheriff of S, Greeting : We command thee, that thou attach A B, C D, E F, G H, I K, &c. (for you may put in a great many) if they shall be found in thy Bailiwick, and them safely keep, so that thou may have their Bodies before us at Westminster, on Wednesday next after, to answer L M, Gent. being one of the Attornies in our Court before us, according to the Liberty and Privilege of such Attornies, from the Time whereof the Memory of Man is not to the contrary used and approved of in the same, of a Plea of Trespass, and have there then this Writ. Witness Lord Raymond, &c.

Note, No Pleading the Stat. of Limitations to an Attorney's Bill.

An Attorney jointly sued with other Persons, or as Executor or Administrator loses his Privilege.

Certiorari for all Complaints and all Attachments.

GEORGE the Second, &c. to the Mayor, &c. Greeting : We willing for certain Causes to be certified (as well) of all Complaints in our Court, before you or any of you, against C D, at the Suit of A B, levied or affirmed

King's Bench. affirmed as of whatsoever Attachments upon those Complaints, or any of them in the Hands of E and F, (&c.) or either of them made. We Command you, and every of you, that the Complaints aforesaid, and the Attachments aforesaid, and each of them, with all things touching them, or any of them, before us at Westminster on Friday, &c. — (the Return) therefore fully and clearly as far as before you, or any of you, they reside you send together with this Writ; and further, that you thereof Cause to be done what of Right, and according to the Law of our Kingdom of England, We shall see fitting to be done, Witnesses, &c.

Habeas Corpus, returnable in Court.

To remove
a Cause out of
the Sheriffs
Court, London.

GEORGE the Second, &c. to the Mayor, Aldermen and Sheriffs of the City of London; Greeting, We Command you, that the Body of C D in our Prison under your Custody, or some of you, as it is said, detain'd under safe and secure Conduct, together with the Day and Cause of his taking and detaining, by whatsoever Name the same A may be charged in the same, you have before us at Westminster, on Wednesday next, after three Weeks of St. Michael, to answer to C D of a Plea of Debt, and further, to do and receive all and particular those things, which our Court before us, shall then and there consider of him in this Behalf, and have there then this Writ, Witness Lord Raymond, at Westminster, the Twenty-eight Day of June, in the sixth Year of our Reign.

(Ventriss.)

Upon

Upon return of *Habeas Corpus*, the Plan-King's Bench. tiff may give a Rule for a *Procedendo*, except the Defendant put in Bail within four Days in Term, and six Days in Vacation.

Habeas Corpus, returnable immediately before the Chief Justice.

As before unto — by whatsoever Name the same C may be charged in the same, you have before our beloved and faithful Lord Raymond, our Chief Justice, assign'd to hold Pleas in our Court before us at his Chamber, scituate in Serjeant's-Inn, Chancery-Lane, immediately after the Receipt of this Writ, to do and receive all and singular, those things which the same our Chief Justice shall then and there consider, concerning him in this Part, and there then this Writ, Witness, &c.

Habeas Corpus, before one of the *Picus* Judges, immediately.

Before Robert Price, Knight, one of our Justices, assign'd to hold Pleas in our Court before us at his Chamber, scituate in Chancery-Lane, Fleetstreet, immediately after the Receipt of this Writ to do and receive, (&c.) as before.

Habeas

King's Bench.

Habeas Corpus, in Vacation returnable
at a Day certain.

*Have before, (&c.) on Monday the Fourth
Day of April, about the Hour of Three of the
Clock in the Afternoon of the same Day, —
to do and receive, &c.*

*Note, There are also Habeas Corpus, ad pro-
sequend ad roud. & ad satisfaciend, as also, ad
deliberand & ad recipiend.*

An *Habeas Corpus*, to remove a Person
charged with Actions in the *King's
Bench*, from the *Fleet* to the *King's
Bench*.

GEORGE the Second, &c. to the Guardian
of our Prison of the Fleet, Greeting, We
Command thee, that the Body of A B, in our
Prison under thy Custody, as it is said, detain-
ed under safe and secure Conduct, together with
the Day and Cause of his taking and detaining,
by whatsoever Name the same A may be charg-
ed in the same, thou before us at Westminster,
(the Return) to answer to C D of a Plea of
Trespas, and also of the Bill of him C, against
him A, for a Debt of One hundred Pound, ac-
cording to the Custom of our Court to be exhibit-
ed before us; and further, to do and receive,
that our Court before us shall then and there
consider of him in this Behalf, and have there
then this Writ, Witness, &c. as before.

Habeas

Habeas Corpus ad Testificand.

GORGE the Second, &c. to W. N. Esq;
 Marshal of our Marshalsea before us,
 being, Greeting, We Command thee, that the
 Body of A B, detained in our Prison, under
 thy Custody as it is said, under safe and secure
 Conduct, by whatsoever Name the same A
 may be charged in the same, thou have before
 our beloved and faithful Lord Raymond, our
 Chief Justice, assign'd to hold Pleas in our
 Court before us at Westminster, in the Great
 Hall of Pleas there, on Friday the first Day of
 September, at the Hour of Eight in the Fore-
 noon of the same Day, there to testify the Truth
 of his Knowledge in a certain Cause in our
 Court before us now depending, and then, and
 there, to be try'd between C D Plaintiff, and
 E F Defendant, in a Plea of Covenant broken,
 and then immediately after the said A B shall
 have then, and there, given his Testimony be-
 fore the aforesaid Chief Justice, to return him
 to our same Prison, under safe and secure Con-
 duct, and have there then his Writ, Witness,
 &c.

Habeas Corpus ad prosequend.

To prosecute his Bill against C D in a Plea
 of Debt, as far as he hath began it in our
 Court before us, as we may be able to proceed
 further in this Behalf as far as of Right; We
 shall see fit to be proceeded and have there, &c.

L

Ad

Habeas Corpus.**Ad Respondend.**

To Answer unto A B concerning a Plea of Debt (or Trespafs as the Case is) as further. We may be able to proceed in this part, &c. as last before.

Ad Satisfaciend.

To satisfie unto A B twenty Pounds for his Damages which he hath Sustained, as well by Occasion of a certain Trespafs to the same A, by the aforesaid C lately done as for his Costs and Charges (&c.) as in Ca Sa. as plainly appears to us of Record, as further, &c. (as above.)

Habeas Corpus, where Sick in Prison is Returned.

GEORGE the Second, &c. Greeting. We command thee that the Body of C D, by thee taken and detained in our Prison under thy Custody altho' Sick, like as by thy Return, (or the Return of R F, late Sheriff of the County aforesaid) in our Court before us sent. Manifestly appears to us thou have before us on Wednesday (&c.) to Answer (or to satisfie, &c. as before) unto A B, concerning a Plea of Trespafs (or a Plea of Debt) &c. Changing where it is to be Changed) and have &c. (as in others)

Habeas

Habeas Corpus upon Capi Corpus.

We Command thee, that the Body of C D, by thee taken and in our Prison, detained under thy Custody, as thou thyself by thy Return in our Court, before us e're while sent, thou hast Charged thyself, have before us at Westminster, on Friday, &c. to answer unto A B, of a Plea of Trespass, and have, &c.

The like to the Sheriff of Middlesex upon a Capi return'd.

It is commanded the Sheriff, that the Body of C D by him taken and in the Prison of the Lord the King under his Custody, detained like as by his Return into the Court of the Lord the King, before the King himself, e're while sent he hath charged himself, he may have before the Lord the King at Westminster, (such a Day) to answer unto A B of a Plea of Trespass, and that he have there then this Precept, &c.

To remove an Action out of an Inferior Court into the King's Bench, you must know the Stile or Title of the Inferior Court, for which see in *Thesaurus Brevium*, the most usual Inferior Courts in or about London, are the Marshalls Court, the Directions whereof is to the Judges of the Court of our Palace at Westminster, and to each of them, Greeting, *London.* We Command you, and every of you, that the Body &c. the Sheriffs Courts of London, their

Proceedings upon Habeas Corpus.

King's Bench. Title is, *to the Mayor, Aldermen, and Sheriffs of London, and every of you, Greeting, the Court of Stepney, the Direction is to the Seneschal of our Court of Record, within the Mannor of Stepney and Hackney, in the County of Middlesex, Hamlets and Liberties of the same, and of them, and every of them, Greeting, &c.* This Direction is double for that there is a Goal for Defendants, arrested in that Liberty by Writs out of Superior Courts, as well as by Process out of the Court; the Court is commonly called, *White-Chapel Court*; when you have made your *Habeas Corpus ad faciend & recipiend* (to do and receive) then upon a Piece of Parchment cut like a little Bail Piece, which is called the *Fiat*, Write this for the Marshals Court. *To the Court of our Palace at Westminster, let a Writ of Habeas Corpus be made for C D, to do and receive returnable immediately.*

Fitchet Attorney.

And then make a Ticket on Paper.

To the Court of our Palace at Westminster, a Habeas Corpus for C D, to do and receive returnable immediately.

Fitchet.

And the same *Fiat* and *Ticket* for London, only put London in the Margent, and for Stepney, to the Mannor of Stepney in the Margent.

Then

Then carry your *Habeas Corpus* with the ^{King's Bench} *Fiat* and *Note*, to Mr. Hawley in the King's Bench Office, who will stamp the *Habeas Corpus*, and return it to you, and keep the *Fiat* and *Note*, you must pay him 7 s. 8 d. in the Vacation and 6 s. 8 d. in Term Time, *Note*, the Parchment on which you Write the *Habeas Corpus*, must be stampd with a 5 s. Stamp, Seal your *Habeas Corpus* as you do other Writs, and carry it to the Inferior Courts to be allowed.

You must observe, that formerly in those Inferior Courts, if the Debt was small they entered the Action 4 l. 19 s. 0 d. the Reason was, that an Action under 5 l. originally was not to be removed, but tried there, but Industry had found out an Expedient for that; for if the Action was under 5 l. you brought another Action of 5 l. or above, at whose Suit you pleased against the same Defendant, and then the *Habeas Corpus* removed both Actions together at any time before the Trial.

But this Method of removing Actions under 5 l. is now altered by the 12 Geo. 1. which recites, that, Whereas the Stat. of 21 Jac. 1 for the more effectual preventing the Delays and Expence occasioned by the Removal of small Causes out of Inferior Courts, hath been of late evaded and rendered ineffectual, by the Contrivance of vexatious Defendants, who by setting up a fictitious Action against themselves, for a pretended Demand of 5 l. or upwards, by such their Contrivance procure the smallest Actions to be removed by Writs of *Habeas Corpus* out of the Inferior Courts into

King's Bench. the Superior Courts, whereby the Plaintiffs in such small Actions, which will not bear the Expence of such Superior Courts, are necessitated to submit to the Loss of their just Demands; now for preventing of such Abuses, and rendring the Statute more effectual for the future: It is Enacted, that from the 24th of *June* 1726, the Judge of such Inferior Courts, as are described in the said Statute, shall, or may, proceed in such Actions, Bills, Plaints, Suits or Causes, as are therein specified, which appear, or are laid not to exceed the Sum of 5 *l.* altho' there may be other Actions against such Defendant or Defendants, wherein the Plaintiffs Demands, shall, or may, exceed the Sum of 5 *l.* this Act to continue in Force five Years, and to the End of the next Sessions of Parliament.

You pay 4 *s.* 10 *d.* for the Allowance of the *Habeas Corpus*, and sometimes more, when there are many Causes to be removed; for all the Causes the Defendant stands charged with above 5 *l.* must be returned with the *Habeas Corpus*; some few Days after the Delivery, call for the Return, and carry it with your Bail to a Judges Chamber, and there put in special Bail, for which you pay 7 *s.* 4 *d.* except it be against the Defendant as Executor or Administrator, for then no special Bail is required above; also the Plaintiff's Attorney may serve the Defendant's Attorney with a

Procedendo. Rule for a *Procedendo*, if Bail be not put in Time, that is in six Days after Service thereof in the Vacation, and four in Term; any of the Judge's Clerks will give the Rule, and if
Bail

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Bail be not put in in time, the Plaintiff takes ^{King's Bench.} out a Summons to attend the Judge, to shew Cause why a *Procedendo* should not be awarded, and if no Cause shewn on the third Summons, they make out a *Procedendo*, and carry back the Cause and try it in the Inferior Court. See the Writ of *Procedendo* herein after.

Note, If your *Habeas Corpus* be directed to any of the said Inferior Courts, or any other within Ten Miles of *London*, you make it returnable immediately, but if the Court be above Ten Miles distant, then the Return must be on a certain Day. ^{*Returnable immediately.*}

Note, If the Defendant be actually a Prisoner in some of the Prisons belonging to these Inferior Courts, the Difficulty will be greater, for he cannot be discharged out of Prison till the Bail on the *Habeas Corpus* be excepted or justified in Court, and therefore in such a Case, the more ready and cheaper Way is to put in Bail to the Action in the Inferior Court which will discharge the Defendant, and then bring the *Habeas Corpus* to remove the Cause. But if the Defendant cannot find Bail, and would be removed to the *King's Bench* Prison, you must deliver the *Habeas Corpus*, and they will make you a Return, and send an Officer with the Defendant to a Judge's Chamber, and a *Comittitur* ^{*Comittitur.*} be writ in Parchment, and the Judges Tipstaff takes the Prisoner into his Custody, and charges him to the *King's Bench* Prison, you pay 11 s. 8 d. at the Judge's Chamber ;

Proceedings upon Habeas Corpus.

King's Bench.

Newgate.

the Tipstaff will Demand 10 s. for carrying the Defendant over, and you must agree with the Officer as cheap as you can for bringing him to the Judge's Chamber. If the Defendant be in the Custody of a Bailiff, or in *Newgate*, and wou'd be turned over to the *King's Bench*, the Practice is the same; you deliver a *Habeas Corpus* directed to the Sheriff of *Middlesex*, and he will search his Office what Writs he hath against the Defendant, and make return of them; and then the Officer or Keeper of *Newgate* will carry the Defendant to the Judge's Chamber, and he will be turned over before the Judge in manner aforesaid. You must take Notice, with what Writs the Defendant is charged, for if it should be only with a Common Plea's Writ, then you cannot turn him over to the *King's Bench*, so that you must make a Bill of *Middlesex*, or an Attachment of Privilege returnable in the *King's Bench*, and carry it to the Sheriff, and he will charge the Defendant in Custody, and return that Action with the other.

And the same Course is taken to remove a Prisoner from the *Fleet* to the *King's Bench*, only the Warden of the *Fleet* will often stand out two *Habeas Corpus's*, at least before he will part with his Prisoner, and will also insist on his being paid his Prison Fees, before he brings up the Prisoner; but a Judge on a Summons will oblige the Warden to bring up the Prisoner without them.

Note,

*Note, Before you deliver your Habeas Cor- King's Bench.
pus, it is fit to speak to a Waiter, if the De-
fendant be in the Fleet to carry him to the
Judge's Chamber, and agree with him, and
also to provide a Tipstaff in Readiness, and
many do go to the Marshal and treat with
him for Chamber Rent, and sometimes for
the Defendant's Liberty, upon Security be-
fore they carry him over.*

Procedendo.

GEORGE the Second, &c. to the Mayor, *Before this*
Aldermen, and Sheriffs of London, Greet- *Writ is filed*
ing, altho' We have lately commanded you, by *forth before to*
our Writ, that the Body of C D in our Prison *search all the*
under your Custody, as it said, detained under *Judges Cham-*
safe and secure Conduct, together with the *bers. and ask*
Day, and Cause of his taking and Detention *the Clerks if*
by whatsoever Name the same C may be charg- *they have no*
ed in the same, you should have before our be- *Bail by them*
loved, and faithful Lord Raymond, our *that are not*
Chief Justice, assign'd to hold Pleas in our *entered, you*
Court before us at his Chamber, scituate in *pay signing in*
Serjeant's - Inn in Chancery-Lane, London, *Vac. 7 s. 8 d.*
(or before A B, Knight, one of our Justices, *Term 5 s. 8 d.*
assign'd to hold Pleas in our Court before us at *Sealing 7 d.*
his Chamber, scituate, &c. immediately after
the Receipt of this Writ, (or you should have
before us at Westminster — the Day —) as
the Return was in the Habeas Corpus (to do
and receive all singular, those things which
our same Justice (or which our Court before
us) of him then, and there shall determine
in that Behalf; notwithstanding for certain
Causes, us now in our Court before us ; espec-
ally

King's Bench *ally moving, We Command you, and every of you, that in whatsoever Complaints or Suits against him C, at the Suit of AB, in our Court before you, or any of you, levied or affirmed, or before you, or any of you, now depending undetermined with the utmost Dispatch which you can make; in like manner you proceed as according to the Law and Custom of our Kingdom of England, (or our City of London afore-*
This Clause *said) you shall see fit to be proceeded, our Writ*
is to be put in *aforesaid to you thereof, before directed to the*
when it is *contrary in any wise notwithstanding, Witness,*
London. *&c. (as in others.)*

Procedendo Super Certiorari.

GEORGE the Second, &c. Greeting,
Whereas, We lately were willing for certain Causes by our Writ, to certify unto you of a certain original Bill, &c. (Reciting the Certiorari in such manner as the Habeas Corpus is before recited) before us (such a Day) (&c.) together with that Writ; as further thereof, we might cause to be done, as of Right, We shall see fitting to be done, notwithstanding for certain Causes, as now in our Court before us, moving, We Command you, and every of you, that as well in the Complaints aforesaid, against the aforesaid C in our Court, before you, or any of you, levied at the Suit of the aforesaid A, as in Attachments thereupon made in the Hands and Custody of EF, with all the Dispatch which you can, in such ways you proceed, as according to the Law and Custom of our City aforesaid, you shall see fit to be proceeded (our Writ of Certioria aforesaid, to you before
 on

*on this Account to the contrary, directed in any King's Bench.
wise notwithstanding, Witness Lord Raymond.
at Westminster, &c.*

Procedendo upon a Writ of Latitat.

GEORGE the Second, &c. to the Sheriff of
London, Geeeting, Whereas, We have
lately commanded our Sheriff of Middlesex, that
he should take C D, if he should be found in
his Bailiwick, and him safely keep, so that he
might have his Body before us at Westminster,
at a certain Day now past, to answer unto A
B, of a Plea of Trespas, (or as the Cause of
Action was in the Latitat.) and our said She-
riff of Middlesex to us at that Day returned,
that the aforesaid C was not to be found in
his Bailiwick, upon which on the Behalf of the
aforesaid A, in our Court before us; it was
sufficiently attested, that the aforesaid C, skulks
and stroles in our City of London (or the
County to which the Latitat was directed)
and We have lately thereupon commanded, that
you should take him if he might be found in
your Bailiwick, and him safely keep, so that
you might have his Body before us at West-
minster, (such a Day) to answer unto the a-
foresaid A, of the Plea aforesaid, and now in
our same Court before us, on the Part of H L,
We understand that you in a certain Complaint,
between him H and the aforesaid C in our
Court before you, the aforesaid Sheriffs depend-
ing undetermined, you have deferred, and still
do defer to proceed therein, on the Occasion of our
said Writ, to the great Damage of him H.
And We in this Behalf, are willing that is
just

*As in the
Latitat.*

Scire Facias.

King's Bench. *just to be done ; We Command you, that in whatsoever Complaints against him C, at the Suit of the aforesaid H L, before you, or any of you affirmed, and before you, or any of you, now depending undetermined, with all the Dispatch you are able in such like to proceed as according to the Law and Custom of our City of London : Ye shall see ought to be proceeded, our Writ aforesaid to you, before thereof lately directed, in any wise notwithstanding, Witness, &c.*

OF SCIRE FACIAS.

Scire Facias in Debt, after a Year and a Day to receive a Judgment.

GEORGE the Second, &c. to the Sheriff of Middlesex, Greeting, Whereas A B Gentleman, lately in our Court before us at Westminster, by Bill without our Writ, and by the Judgment of the same Court hath recovered against C D Gentleman, otherwise called (&c.) a Debt of two hundred Pounds, and also three Pounds for his Damages which he hath sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him about his Suit in that Behalf, appointed whereof the same C D is convicted, as it appears to us of Record. And now on the Part of the aforesaid A in our Court before us, We understand, that altho' Judgment be thereupon obtained; yet Execution for the Debt and Damages aforesaid, to him still remains to be done, whereupon the same A hath humbly pray'd us to provide for him, his proper
Remedy

Remedy in this Behalf, and we being willing King's Bench
to do in this part what is just Command thee,
that by honest and lawful Men of thy Baili-
wick, thou make to know the aforesaid * C D, * If a Scir.
that he may be before us at Westminster, (the Fac. against
Return) to shew if any thing he had or knew to Terr. Te
say for himself, why the aforesaid A ought not to nants (then
have his Execution against him, according to say as before
the Force, Form, and Effect of the Recovery unto, (We
aforesaid, if it shall seem expedient to him; Command
and further, to do and receive which our same thee, that by
Court before us of him, then and there, shall honest and
consider of this Behalf, and have then there lawful Men
the Names of them by whom you Cause him to of thy Baili-
know, and this Writ, Witness, Lord Ray- Cause to
mond, &c. know the
Tenants of all
the Lands and
Tenements

which were the aforesaid C, on the Day next after . . . in the . . .
Year of our Reign. on which the Judgment aforesaid was obtained, or
ever after in thy Bailiwick, that they may be before us at Westminster,
. . . Day . . . next after . . . to shew (&c. wherefore the Debt and
Damages aforesaid, of those Lands and Tenements, ought not to be made
and paid (or given) to the aforesaid A, according to the Force, Form, and
Effect, of the Recovery aforesaid, if (&c.) and further, to do and re-
ceive, that our same Court before us of them then, and there shall con-
sider of in this Behalf, and have there then, &c. (as in others.)

Scir. Fac. in Case on Assumpsit after a
Year and a Day.

GEORGE the Second, &c. to the Sheriff of
S, Greeting: Whereas A B lately in our
Court before us, at Westminster, by Bill with-
out our Writ, and by the Judgment of the same
Court hath recovered against C D Twenty
Pounds for his Damages which he hath sus-
tained, as well by Occasion of the not Perform-
ance of certain Promises vnd Undertakings by
him C to the same A lately made, as for his Costs
and

King's Bench. and Charges by him about his Suit in that
 * Inserting Behalf appointed, whereof, &c. (* as before.)
 Damages,
 Costs and Charges instead of Debt and Damages.

Scire Facias in Trespass on the Case.

GEORGE the Second, (as before, unto)
 hath recovered against C D Twenty
 Pound for his Damages which he hath sustain-
 ed, as well by Occasion of a certain Trespass
 on the Case, by him C to the same A lately
 alledged, as for the Costs, (&c. as before.)

Scire Facias in Trespass.

GEORGE the Second, &c. (as before, unto)
 hath recovered against C D Twenty
 Pound for his Damages, which he hath sus-
 tained, as well by Occasion of a certain Tres-
 pass by him C, to the same A lately done, as
 for the Costs, &c.

This Writ of *Scire Facias* was given by
 the Statute of *Westminster*, 2 c. 45. and before
 that Statute, if the Plaintiff had not taken out
 his Execution upon a Judgment against the
 Defendant within a Year and Day, he had
 no Remedy but a new Action of Debt on
 his Judgment; but now this *Scire Facias* may
 be sued out to revive it, but it must be
 directed into the County where the original
 Action was brought.

The Writ of *Scire Facias*, after a Year
 and a Day, may be had of Course against the
 Defendant without Motion, but if the Judg-
 ment be above seven Years, and not above
 Ten

Ten Years old, you may have a Rule at the King's Bench Side-bar for a *Scire Facias* to revive it ; but if it be above Ten Years standing, the Plaintiff must move the Court to obtain a Rule for a *Scire Facias* before he can be able to make out such Writ, and in order to obtain such Rule, there must be an Affidavit of the Debt being unsatisfied, and the Judgment not vacated, and that the Defendant is living, and then the Court will grant you a Rule accordingly.

If the Plaintiff takes Execution within the Year, and it is not served, yet he may continue the same upon the Roll from Term to Term till it is served, and need not sue out any *Scire Facias*.

If the Defendant appear to this Writ of *Scire Facias*, and can shew good Cause as a Release, Satisfaction or any other just Cause, he may plead it in Discharge.

If the Sheriff return *Scire Fac.* and the Defendant upon the Return of the said *Scire Fac.* do not forthwith appear and plead, after a Rule given with the Clerk of the Rules is out, the Plaintiff shall have present Execution.

See after the Entry of the Judgment.

But if the Sheriff return a *nihil habet* (he has nothing) upon the *Scire Facias*, and get it returned in the same Manner, and each *Scire Facias* must lie four Days at least in the Office before their respective Returns, and there must be eight Days Distance between the Teste and Return of each *Scire Facias* ; the first must be returned before the second is made

Scire Facias.

King's Bench. made out, and the second tested the Day of the Return of the first.

If there are not eight Days distant between the Teste and Return of each *Scire Facias*, the Court may quash them on a Motion, or the Defendant may demurr thereto, 1 *Lutw.* 25. *Salk.* 599. When you have two *Nibils* returned, it amounts to a *Scire Feci* and the Plaintiff may (after he hath given a Rule as before on the *alias Scir. Fac.* which is of four Days, enter up Judgment of Course, and sue out what Execution he pleaseth.

See after the Entry of such Judgment.

Note, If you do not proceed upon a *Scire Facias* within a Year and a Day after it was taken out, you cannot after that proceed upon that Writ, but must sue out a new *Scire Fac.* (for the old Writ is discontinued) and it must be directed into the County where the original Action was brought. Where either Plaintiff or Defendant, or one of the Plaintiffs, or one of the Defendants die, there cannot be any Execution sued out upon the Judgment, until a *Scire Facias* sued out by the Heirs, Executors, or Administrators, and Judgment thereupon. *Styles Prac. Reg.* 499.

See after. *Scire Facias* against the Bail, and the Entry thereof, with the Method of proceeding against them.

Entry

Entry of two *Scir, Fac.* with two *Nihil*s returned, and by Judgment on Default.

THE Lord the King hath given in Charge the Sheriffs of London his Writ closed in these Words, to wit, George the Second, &c. Reciting the Writ of *Scire Fac.* verbatim and adding the Teste) Witness Lord Raymond at Westminster, the 28th Day of June, in the Sixth Tear of our Reign, at which Day (the Return of the first Writ) before the Lord the King at Westminster, came the aforesaid (Plaintiff) in his proper Person, and the Sheriff of London, to wit, A B Knight, and C D Knight, at that last mentioned Day, Returned; that the aforesaid (Defendant) had nothing in their Bailiwick where or by which they could make him to know, nor is he to be found in the same, and the aforesaid (Defendant) did not come. Therefore as it was elsewhere commanded the Sheriff of London, that by honest, &c. they make to know the aforesaid (Defendant,) that he may be before the said Lord the King at Westminster, on Saturday next after Three Weeks of St. Michael (Return of the alias *Scire Facias*) to shew in Form aforesaid, if, &c. and further, &c. the same Day last mentioned is given to the aforesaid (Plaintiff) there, &c. at which Day last mentioned, before the Lord the King at Westminster, aforesaid, came the aforesaid (Plaintiff) in his proper Person, and the aforesaid Sheriffs of London, as before returned, that the aforesaid (Defendant) had nothing in their Bailiwick, where or by

M

which

King's Bench *which they could make him to know, nor is he to be found in the same, and the aforesaid (Defendant) at the same Day last mentioned, tho' duly summoned did not come, but made Default. Therefore it is determined, that the aforesaid (Plaintiff) may have Execution against the aforesaid (Defendant) for the Debt and Damages aforesaid, according to the Force, Form and Effect of the Recovery aforesaid, &c.*

Execution by Default on a *Scire Fac.*
upon a *Scire. Fac.* after a Year and a Day.

THE Lord the King hath given in Charge, &c. (reciting the Writ as before) at which Day (the Return of the Writ) before the Lord the King at Westminster, came the aforesaid Plaintiff in his proper Person, and the Sheriff of C, to wit, A B Esq; at that Day last mentioned, returned, that he by Virtue of the aforesaid Writ to him directed, caused the aforesaid Defendant to know by D E and F G honest and lawful Men of his Bailiwick, that he may be before the Lord the King at the Day and Place aforesaid, to shew, &c. as within was commanded him, and the aforesaid Defendant so forewarned, and at the same Day last mentioned, solemnly required, did not come, but made Default, it is therefore determined, that the aforesaid Plaintiff may have Execution against him for the Debt and Damages aforesaid, according to the Force, Form and Effect of the Recovery aforesaid, &c.

Entry

Entry of *Scire Facias* against Executors,
after two *Nihils* returned, Defendant
appears by his Attorney, and pleads
Nultiel Record (no such Record.)

THE Lord the King hath given in Charge
(as before to the End of the Return of
the second *Scire Facias* (*viz.* and the afore-
said Sheriff of M, as at first returned, that
the aforesaid B had nothing in his Bailiwick,
where or by which he could make to know, nor
is he to be found in the same. And the afore-
said B at the same Day last mentioned, being
duly summoned by J S his Attorney, likewise
came. And upon this the aforesaid E, as be-
fore, prayed Execution against the aforesaid
B for his Debt and Damages aforesaid to be
adjudged to him, &c. and the aforesaid B saith,
that the aforesaid E ought not to have his
Execution against him for his Debt and Da-
mages aforesaid, because he saith, that there
is not any such Record of the Recovery of the
Debt and Damages aforesaid, as is above
supposed by the Writ aforesaid; and this he
is ready to make appear; wherefore he prays
Judgment if the aforesaid E ought to have
his Execution against him for the Debt and
Damages aforesaid, &c.

And the aforesaid E saith, that for any
Thing by the aforesaid B above, in Pleading
alledged, he ought not to be precluded, or Dis-
banded from having his Execution against him
for his Debt and Damages aforesaid, because he
saith that he has such a Record of the Recovery
of the Debt and Damages aforesaid, as above,
M 2 by

King's Bench *by the Writ aforesaid is supposed, as appears by the Roll in Trinity Term, in the Sixth Year of the Reign of the Lord George the Second, now King of Great Britain, and this he is ready to attest by that Record, and prays that the Term and that Roll may be seen and inspected into by the Court of the Lord the King here; and because the Court of the said Lord the King now here, is not yet advised to give their Judgment of and upon the Premises, a Day is thereon given to the Parties aforesaid, before the Lord the King at Westminster, until Saturday the 27th Day of October next, after three Weeks of St. Michael, to hear their Judgment of that Issue, for that the Court of the said Lord the King here, is not thereof yet, &c. (advised.)*

Note, The Master is to sign Judgment upon the Rolls.

Scire Facias against Executors upon Judgment recovered in the Life of the Testator.

GEORGE the Second, &c. to the Sheriff of S, Health: *Whereas A B lately in our Court (&c. as before) as it plainly appears to us of Record, and afterwards, to wit, (such a Day and Year) the aforesaid C at D, in thy County, made his last Will and Testament in Writing and made E F Executor of his Testament aforesaid, and afterwards there died, after whose Death the aforesaid E F took upon himself the Burthen of the Execution of his Will aforesaid, and hath proved that*

that Will in due Form of Law, and now on the King's Bench, Part of the aforesaid A in our Court before us, we understand that altho' Judgment may be thereof given, yet Execution hitherto remains to be done for him for the Debt and Damages aforesaid; wherefore the same A hath entreated us for himself to be provided of his Remedy in this Behalf, and we in this Part being willing that which is just to be done, we command thee that by honest, &c. thou make the aforesaid A B to know that he is to be before us on Wednesday, &c. to shew if any Thing he had, or knows to say for himself, why the aforesaid A ought not to have his Execution of the Goods and Chattels which were the aforesaid C D, at the Time of his Death in his Hands, to be administred according to the Force, Form, and Effect, of the Recovery aforesaid, if it shall seem expedient to him, and further to do, (&c.) and have, (&c. as in others.)

Scir. Fac. against an Administrator upon a Judgment recovered against the Intestate.

GEORGE the Second, (&c. as before unto) as it plainly appears to us of Record, and afterwards to-wit (such a Day) the aforesaid C at D. in thy County died Intestate, after whose Death Administration of all and singular the Goods and Chattels, Rights and Credits, which were the aforesaid C, at the Time of his Death by — to whom the Granting of Administration aforesaid in this Behalf of Right belonged, to one C C, Widow, — (such a Day)

Scire Facias.

King's Bench. in the sixth Year of our Reign, at D afore-
There is no said, in due Form of Law, *was granted, and*
need to menti now on the Part, (Ec. as last before to the
on the Day or End.)
Year.

Note, If the Judgment was had against
 Executor or Administrator, then the Judgment must be entered thus.

— Of the Goods and Chattels which were
 the aforesaid Testator (or Intestate) in the
 Hands of the aforesaid Executor, (or Administrator) to be administered, if so much in his
 Hands he may have, and if so much in his Hands
 he may not have, then the Damages aforesaid
 to be administered of the proper Goods and Chattels of him, (the Executor or Administrator,
 (Ec.

Scire Facias against the Bail.

Next, We shall shew the Method of proceeding against the Bail by *Scire Facias*, with the Forms and Entries thereof.

Where Bail are put in to an Action brought in this Court, the *Scire Facias* against them, must be always sued out in *Middlesex*, because all Bails to Actions are supposed to be taken in Court, which is in *Middlesex*.

But in case of a Recognizance entered into by Bail upon a Writ of Error, if it be entered to be taken at a Judge's Chamber in *London*, then the *Scire Facias* must be there sued out Stiles Reg. 499 ; There must be also
 eight

eight Days inclusive between the Teste and ^{King's Bench.} Return of each *Scire Facias* against the Bail, and not one of them four or five Days and the other of them twelve, and each *Scire Facias* must lye four Days at least in the Sheriffs Office before their respective Returns, or you need have but one *Scire Facias*, if a *Scire Fecias* be returned thereupon by the Sheriff: But first, before a *Scire Facias* issues to the Bail, there must be a *Cap. ad Satisfac.* directed into the County where the Action is laid against the Principal Defendant, and a *non est inventus* he is not to be found returned upon it also, there must be eight Days exclusive between the Teste and Return of such *Capias ad Satisfaciend*, to Warrant a *Scire Facias* against the Bail, and the *Capias* must lye in the Sheriffs Office four Days exclusive before the Return be out, Salk. 559. After the Return of it, by *non est inventus*, he is not be found, and filed you make out the *Scire Facias*, as is hereafter set forth, and the Entry thereupon.

Note, That if the Defendant does not render himself, before or upon the Day of the Return of the *Scire Facias*, with a *Scire Feci*. or before or upon the Return Day of the Second *Scire Facias*, he can never do it after, and you give a Rule of Course with the Clerk of the Rules after the Return of the *Scire Feci*, or the second *Scire Facias*, and if the Defendant do not plead before the Rule is out, you may have a *Fi. Fa.* or an *Elegit* against the Bail, and enter the Judgment on the Roll, as see after. But it is said, that to entitle yourself to a *Ca. Sa.* against the

Scire Facias.

King's Bench. Bail, you must first sue out a *Fieri Fac.* and get a *Nulla bona*, no Goods returned there-upon.

If the Defendant is surrendered in time, as aforesaid, you must enter such Surrender in the Marshals Book, with Mr. Lantrow the Clerk of the Dockets, and give the Plaintiff's Attorney Notice of such Surrender in Writing, — then take the Bail Piece from the Judge's Chamber, if it was not before filed, and afterwards apply to the Clerk of the Papers of the *King's Bench* Prison, for a Certificate of the Defendant's Surrender, and then carry the Bail-Piece with the Certificate to the Master of the *King's Bench* Office, and he will Mark an *Exoneretur* (*let him be discharged*) on the Bail-Piece, and then deliver it to Mr. Hawley, Signer of the *Lattits*, and he will file it, and so the Bail are entirely discharged.

Note, If the Defendant dies before the Return of the *Scire Feci.* or of the second *Scire Facias*, the Bail are discharged by his Death, and upon a Motion, the Court will grant a Rule accordingly.

You must enter the first *Scire Facias* on the Roll of that Term, when the first *Scire Facias* is returnable, and so award your other *Scire Facias* on the same Roll, and continue the Proceedings and Pleadings, if any till Judgment be entered all on the same Roll. — And if the Plaintiff please, he may levy Part of the Debt upon the Defendant's Goods first, and after resort back to the
Bail

Bail for the Residue ; but if he take the De-King's Bench.
fendant's Body in Execution, he cannot
meddle with the Bail at all.

Scire Facias against the Bail in Debt.

GEORGE the Second, &c. to the Sheriff of
M. Greeting, Whereas A B, lately in our
Court before us at Westminster, by Bill with-
out our Writ, (&c. as in Debt unto) as it
plainly appears to us of Record. And now on
the Part of the aforesaid A B, in our Court be-
fore us : We understood, altho' Judgment be
thereof given ; yet Execution for the Debt and
Damages aforesaid, for him still remains to
be done, and whereas E F of, &c. Gent. and
G H of the same Esq; sometime since to witt * The Term,
in the Term of St. Michael, in the sixth Year ^{the Bail was}
of our Reign, in our same Court before us at ^{put in take}
Westminster personally came, and became Su- ^{Cave that the}
reties and Bail, and each of them by himself ^{Names and}
became Surety and Bail for the aforesaid C D, ^{Additions of}
that if it should happen the aforesaid C D, ^{the Bail, are}
in the Plea aforesaid to be convicted, then the ^{exactly the}
same Bail have granted, and each of them by ^{Writ, as are}
himself, hath granted that as well the Debt ^{on the Bail-}
aforesaid, as all such Damages, Costs, and ^{Piece, taken}
Charges, which to the aforesaid A B, in that ^{before the}
Behalf should be adjudged, of their and each ^{Judge.}
of their own proper Lands and Chattels to be ^{Quere, If}
made, and to the Use and Beboof of him A B ^{the Bail was}
to be levied, if it should happen the aforesaid ^{taken after}
C D, that Debt and Damages, Costs, and Charges, ^{the Continu-}
to the aforesaid A B, did not pay or render ^{ance Day, if}
him- ^{it is not Bail}
be so mention- ^{of the succeed-}
ed in the Scire ^{ing Term, and}
if it must not

Fac. one Scire Fac. with Notice sufficient.

King's Bench. *himself to the Prison of the Marshall of our Marshalsea before us on that Occasion; yet the aforesaid C D, the Debt and Damages, Costs and Charges aforesaid, to the aforesaid A B, hath not as yet paid, nor himself to the Prison of the Marshall, of our Marshalsea before us, rendered, according to the Form and Effect of the Recognizance aforesaid, so as on the Insinuation of the aforesaid A B, in our Court before us, We have received Information, whereof the same A B hath supplicated us of a suitable Remedy to be provided for him in this Particular, and we in this Part willing to be done what is just, Command thee, that by good and lawful Men of thy Bailiwick, thou Cause the aforesaid E F and G H, to know that they be before us at Westminster (such a Day) to shew if any thing for themselves they have, or know to say, why the aforesaid A B, ought not to have his Execution against them, for the Debt and Damages aforesaid, according to the Force, Form, and Effect, of the Recovery aforesaid, if it shall seem expedient to him; and further, to do and Receive all and singular those things, which the same our Court before us, shall then and there, consider of them in this Particular, and have there then the Names of those by whom thou hast made them to know, and this Writ, Witnes, (&c.)*

Scire Facias in Case against the Bail.

GEORGE the Second, &c. *Whereas A B, lately in our Court (as above) hath recovered against C D, One hundred Pounds for his Damages, which he has sustained, as well*

on Occasion of the Non-Performance of certain King's Bench Promises and Undertakings to the same A, by the aforesaid C, lately made as for his Costs and Charges by him about his Suit (&c. as in Debt unto) as it is Evident to us of Record, and altho' (&c.) and whereas (&c. as before) to the End only instead of Debt, Damages, Costs and Charges, you only say, Damages, Costs and Charges.

Before you make out *Scire Facias* against the Bail, see that the Declaration be entered upon the Rolls at *Westminster*, of the same Term the Declaration was of, and after the Declaration is entered *Verbatim*, you must enter up the Recognizance against the Bail thus in Case (to wit.)

And the aforesaid (Defendant) by . . . his Attorney comes and defends the Force and Injury when, &c. and upon this before the Lord the King at Westminster, came (the Bail with their Additions) in their proper Persons, and became Sureties and Bail, and each of them by himself became Surety and Bail for the aforesaid (Defendant) that if it should happen the same (Defendant) to be convicted in the Plea aforesaid, then they the same Bail agreed, and each of them for himself granted to be made, and to the Beboof of the aforesaid (Plaintiff) levied all such Damages, Costs and Charges, which the aforesaid (Plaintiff) in this Behalf should be adjudged of their, and each of their own Lands and Chattels, if it should happen the same (Defendant) those Damages, Costs and Charges to the aforesaid Plaintiff, did not
pay

King's Bench. *pay or render himself on that Occasion, to the Prison of the Marshalsea of the Lord the King, before the King himself.*

Some enter this Recognizance with an Imparlance which ought to be but in some special Cases, for Bail may be given after an Issue, joined, and after the Recognizance is entered up.

The Entry of two Scire Facias against the Bail, by Default in Case.

THE Lord the King hath given in Charge to the Sheriff of Middlesex, his Writ closed in these Words, (to wit) George the Second, &c. (Reciting the Writ of Scire Facias Verbatim, and adding the Teste) Witness Lord Raymond, at Westminster, the Twenty eighth of June, in the sixth Year of our Reign, at which Day Tuesday (the Return in the Scire Facias) before the Lord the King at Westminster, came the aforesaid (Plaintiff) in his proper Person, and the Sheriff of Middlesex aforesaid, to wit AB Knight, and CD Knight, at that Day last mentioned, returned that the aforesaid (the Bail) had nothing, nor either of them had any thing in his Bailiwick, where or by which he could make them, or either of them to know, and that the aforesaid (the Bail) were not, nor either of them was to be found in the same, and the aforesaid (the Bail) came not, nor either of them came, therefore as it is elsewhere commanded, the Sheriff of the County of Middlesex, that by honest and Lawful

Men

Men of his Bailiwick, be make the aforesaid King's Bench (the Bail) to know, that they be before the Lord the King at Westminster, on Friday (the Return in the second Scire Facias) to shew in form aforesaid; if (&c.) and further, &c. the same Day last mentioned is given to the aforesaid (Plaintiff) there, &c. at which Day last mentioned, before the Lord the King, at Westminster aforesaid, came the aforesaid (Plaintiff) in his proper Person) and the aforesaid Sheriff of the County of Middlesex aforesaid, as before returned, that the aforesaid (the Bail) had nothing, nor either of them had any thing in his Bailiwick, where or by which he could make them, or either of them to know; and that the aforesaid (the Bail) were not, nor either of them was to be found in the same, and the aforesaid (the Bail) did not come, nor either of them came, but made Default.— Execution awarded. Therefore it is considered, that the aforesaid (the Plaintiff) may have his Execution against (the Bail) and each of them for the Damages, Costs and Charges aforesaid, according to the Force, Form, and Effect of the Recognizance aforesaid, by the Default of them (the Bail.)

See Pleas for the Bail to the Scire Facias, at the End of the Errors.

Of superseding Actions, and the Forms of the Superedeas's.

BY Rule of Court made Trin. 2. Geo. It is Ordered, that if any Defendant shall be com-

King's Bench. committed to the Custody of the Marshal of this Court, or shall be charged in Custody of the said Marshal, or shall be arrested and committed (by Vertue of the Process of this Court) to the Custody of any Sheriff or other Officer whatsoever, at the Suit of any Plaintiff, and shall so remain in Custody two Terms, and the Plaintiff shall not declare against such Defendant in that time, then such Defendant after the End of the second Term, after such Imprisonment, shall be discharged out of the Prison in which he was so detained, upon filing Common Bail to be signed by one of the Judges of this Court, without giving Notice to the Plaintiff or his Attorney, and if any Plaintiff shall declare against such Defendant, a Prisoner in Custody of the Marshal of this Court, or any Sheriff or other Officer, and shall not proceed to Trial or Judgment, within three Terms next after such Declaration delivered; or if any Plaintiff shall obtain Judgment in this Court, in any Action against such Defendant remaining in Prison, and shall not charge him in Execution upon such Judgment so obtained, within two Terms next after such Judgment so had obtained, then such Defendant so remaining in Prison may file Bail, or prosecute a Writ of *Superfedeas* out of this Court for his Discharge out of Custody, to be allowed by one of the Judges of this Court, if the Plaintiff or his Attorney on Notice to one of them, given by the Defendant's Attorney (and Affidavit made of such Notice) shall not appear before the said Justice, and shew Cause against
filing

filing Bail or obtaining such Writ of *Super-King's Bench. fedeas.*

To be entituled to the Writ of *Supersedeas* you must get a Certificate from the Sheriff in whose Custody the Defendant is, that there is no Declaration delivered against him in his Custody, or *Habeas Corpus* brought, and then get a Certificate from the Clerk of the Declarations at the King's Bench Office, that no Declaration is filed, afterwards make out a Common Bail Piece with this Addition; *because the Plaintiff hath not declared within two Terms, let a Writ of Supersedeas be made* which the Judge signs, and is the Authority for the Signing the Writ, and at the same time you sign the Writ, you file the Certificates, then seal and carry the Writ to the Sheriff, who thereupon will make out a Discharge for the Defendant to the Keeper of the Prison.

If the Defendant be in Custody of the Marshal of the King's Bench Prison, and no Declaration delivered within two Terms, you get a Certificate thereof from the Clerk of the Papers of the King's Bench Prison, and from the Clerk of the Declarations, and thereupon a Judge will Order Common Bail to be filed, and upon a Certificate thereof, the Marshal will discharge the Defendant without a *Supersedeas*.

If a Declaration hath been delivered against a Defendant in Custody of any Sheriff or other Officers, and no further proceedings had according to the Rule, then upon taking out and serving on the Plaintiff's Attorney a Summons from a Judge, to shew Cause why a Writ of *Supersedeas* should not
be

King's Bench. be granted to discharge the Defendant out of Custody for want of Prosecution ; the Judge will, if Cause be not shewn to the contrary, Order such Writ accordingly on filing common Bail.

But if a Defendant be in Custody of the Marshal, and no Prosecution as before, then on a Summons and Service thereof, and no Cause being shewn to the contrary, the Judge will Order the Defendant to be discharged on filing Common Bail without any Writ of *Supersedeas*.

Supersedeas for not declaring in two Terms.

A *Supersedeas* is a Writ to command or request the Parties to whom it is directed to stay, or forbear the doing of that which in Appearance of Law might be done, were it not for the Cause whereupon the Writ is granted.

GEORGE the Second, (&c.) to the Sheriff of S. Greeting ; Whereas, We have lately commanded thee by our Writ, that thou should take A B, if he were to be found in thy Bailiwick, and him safely to keep, so that thou might have his Body before us at Westminster, on Wednesday next after three Weeks of St. Michael last past, to answer unto F G, Gent. of a Plea of Trespass, and also of a Bill of him F, against him A, for one hundred and twenty Pounds of Debt, according to the Custom of our Court to be exhibited before us ; and because the same F hath not declared against him A, within two Terms, by which the same A, in the same our Court before us came, and put in common Bail at the Suit of the aforesaid F, in the Plea aforesaid ; therefore, We Command thee, that of further taking the aforesaid A, to be attached and imprisoned, or him on that Occasion, to be any ways molested at the Suit of the aforesaid

*aforsaid F in the Suit aforsaid, thou altogeth- King's Bench.
er forbear, and if him on that Occasion, and
not on any other thou hast taken and detained
in Prison, then him A, out of the Prison in
which he is, detained without delay, thou
Cause to be discharged at thy Peril, Witness,
Lord Raymond, &c.*

*Supersedeas upon the Defendant's filing
Common Bail by Order of a Judge.*

GEORGE the Second, &c. to the Sheriff of
Middlesex, Greeting ; Whereas, it was
lately commanded thee, that thou should take
M. N. if she was to be found in thy Bailiwick,
so that you might have her Body before us at
Westminster, on Wednesday next after three
Weeks of St. Michael, to answer unto I K, of a
Plea of Trespass, and also of a Bill of him I
K, against her M N, for one hundred Pounds
upon an Undertaking according to the Custom of
our Court to be exhibited before us, and be-
cause the same Martha came into our Court be-
fore us, and hath put in Common Bail at the
Suit of the aforsaid I K, in the Plea and Bill
aforsaid; therefore, We Command thee, that
of the taking the aforsaid Martha to be at-
tached, imprisoned, or on that Occasion to be
any way disturbed, thou altogether forbear, and
if her Martha, on that Occasion and not on any
other, thou hast taken and doth detain in
Prison, then without delay, cause her Martha
to be discharged out of the Prison in which she
is so detained at thy peril, Witness, &c.

N

If

King's Bench. If a priviledged Person as an Attorney, &c. is sued in any Jurisdiction foreign to his Priviledge, he may have a *Superfedeas*.

Superfedeas for an Attorney.

GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of our City of London, Greeting; Whereas, as well on account of our Royal Dignity, as on the antient Custom according to the same in times past used and approved of: It hath hitherto upheld and maintained, that all and every our chief Clerks, appointed to be inrolled for the Pleas in our Court before us, and their Clerks for the time being, and all and every the Attorney and Attornies of the same our Court, and other the Officers thereof, ought not to be drawn or compelled, nor from the whole time abovesaid, have been accustomed elsewhere than in our Court before us, to answer any Judges secular upon any Pleas or Plaints (Pleas of free Tenement only excepted) have been accustomed. And now on the Part of R G, Gent. one of the Attornies of our Court, inrolled for the Pleas in our Court before us. We have received Information, that notwithstanding the Dignity and Custom aforesaid, certain Evil disposed Persons the Dignity and Custom aforesaid, little regarding the aforesaid R G in our Court before you, on Pretence of diverse Plaints before you against the same R levied, have drawn unto a Plea, to the manifest Disparagement, and lessening of our Dignity and Custom aforesaid, and to the great Loss and Grievance of the same R, that if it be permitted, it will fall to others hereafter for

a

a pernicious Example; therefore, We Command King's Bench. you firmly enjoyning, that to proceed further before you or any of you in the Complaints aforesaid, or any of them, you altogether forbear, and every of you forbear telling to the Parties in the same Complaints before you in form aforesaid to be prosecuted, that they may come to our Court before us to obtain Justice there in that particular, if it seems expedient to them, Witness, &c.

Supersedeas on a Habeas Corpus, after Procedendo.

GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of London, Greeting, altho' We have lately commanded you by our Writ, that the Body of A B in our Prison under your Custody, as it is said, detained under safe and secure Conduct, together with the Day, and cause of his taking and detaining, by whatsoever Name the same A B might be charged in the same; you should have before our beloved and faithful C D, Knight, one of our Justices, assigned to hold Pleas before us, at Serjeant's-Inn in Fleet-Street, London, immediately after the Receipt of that Writ, to do and receive all and singular those things which our same Justice shall then and there consider of him in that behalf; and altho' for certain Causes us in our Court before us especially moving, We had lately commanded you and every of you, that in whatsoever Complaints against him A, at the Suit of E F, in our Court before you or any of you, levied or affirmed now depending undetermined; with the utmost Dis-

King's Bench. *patch with which you could, you should likewise proceed as according to the Law and Custom of our Kingdom of England, and our City of London, to you should seem fit to be proceeded on (our Writ aforesaid of Habeas Corpus to you before on this Account to the contrary directed in anywise notwithstanding,) and because the aforesaid Writ of Procedendo hath carelessly issued, and because the same A in our Court before us hath found sufficient Bail to Answer the aforesaid E F, in the Plaint aforesaid; therefore We Command you, that if any further Prosecution in the Plaint aforesaid, by Virtue of the Writ of Procedendo aforesaid, you absolutely Surcease at your Peril, Witness, &c.*

*Note, If the Defendant appear by Superse-
deas (as he may without Bail, tho' the Action
be 500 l.) then he enters an Appearance with
the Philazer, and you declare against him as
by Original, A B late of C in the County a-
foresaid, was attached, and the Defendants
Attorney pays the Plaintiffs Attorney 4 d. per
Sheet, and 4 d. for every Sheet of the Issue,
and all the Writs and Executions are returna-
ble wheresoever, &c.*

*Supersedeas for the Defendant taken by
the late Sheriff, because he hath put
in Bail.*

GEORGE the Second, &c. to the Sheriff
of N, Greeting: *Whereas we have lately
commanded the late Sheriff of thy County by our
Writ, that he should take A B, if he was to
be*

be found in his Bailiwick, and should keep him ^{King's Bench,} safely, so that he might have his Body before us at Westminster, on Wednesday next after — in the Sixth Year of our Reign, to answer unto C D, of a Plea of Trespass, and also of a Bill of the same C, against him A for a Debt of Twelve Pounds, according to the Custom of our Court, to be exhibited before us; and the same A by Vertue of our Writ aforesaid was taken, and in our Prison under thy Custody is as yet detained, because however the aforesaid A in our Court before us hath put in Bail according to the Custom of our Court aforesaid, to answer the aforesaid C D, of the Plea and Bill aforesaid: We Command thee, that if the aforesaid A on that Occasion, and not on any other in our Prison under thy Custody be detained; without Delay thou cause to be discharged and suffer to go at large, under the Peril of incurring our Displeasure, Witness, &c.

Ventris.

Of Declarations.

ALL Actions personal where no Possession is awarded, are transitory and ^{Actions} ^{transitory.} not local, as Debt, Detinue, Annuity, Account, Case, &c. and may be commenced and the Declaration laid in such County as the Plaintiff Pleaseth; but the Court on Motion before the Rules to plead are out, will alter the Venue Affidavit being made, that the Cause of Action arose in another County.

But all real and mixt Actions, as Ejectment, Trespass, *quare Clausum fregit*, Waste, ^{Local} ^{Actions.} &c. are local, and are to be laid in the County

King's Bench. ty where the Cause of Action arose, or where the Lands lye.

In all Actions upon the Case, Trespass, Assault, Battery, &c. you are not obliged to lay the certain Day in your Declaration, but you may lay it at any time after the Cause of Action accrewed, &c. before the Effoin Day of that Term, the Declaration is of.

But if the Cause of Action arose in that Term you declare of, as it may sometimes happen on a Promissary Note, &c. then you confine your Declaration to a certain Day, subsequent to the Cause of Action, by Writing on the Top of your Declaration, *Monday next after fifteen Days of St. Martin, in the Term of St. Michael, in the Sixth Year of King George the Second.*

Upon a *Mutuatus* (Money Lent) for a Judgment by Warrant of Attorney.

Michaelmas in the Sixth Year of King George II.

S. (to wit) **A** B, complains of C D, in the Custody of the Marshal, &c. of a Plea, that he render to him one hundred Pounds of lawful Money of Great-Britain which he owed him, and unjustly detains for that, to Wit, that Whereas the aforesaid C D, the tenth Day of June, in the Sixth Year of the Reign of the Lord George the Second, now King of Great-Britain, &c. at E, in the County aforesaid, had borrowed of the aforesaid A, the aforesaid 100 l. to be paid unto the aforesaid A, when he should be thereof requested, yet the aforesaid C, altho' often requested, &c.

Not informed
by F G.

Declarations.

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the aforesaid 100l. to the aforesaid A, hath King's Bench. not yet paid, but that to him hitherto hath altogether denied, and as yet doth deny to pay; wherefore the aforesaid A, says that he is the worse, and has Damage to the Value of 20l. and therefore brings his Suit, &c.

<i>John Thornhill, for the Plaintiff, Josias Fitchet, for the Defendant.</i>	}	Pledges of Prosecuting	{	<i>Jo. Doe, Rich. Roe.</i>
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You write this Declaration on Paper Stampt with a double half Crown Stamp.

Make an *Incipitur*, (or beginning) on the Roll, and the Clerk of the Dorckets will Enter and Mark the Declaration and Roll, then the Master will Sign your Judgment, and allow you 63 s. Costs, but before you Sign your Judgment, you must File a Common Bail Piece for the Defendant.

Note, This Judgment must be enter'd as others, by way of *Memorandum*. (It is to be Remembered,) on the Roll which is usually of the same Term as *Memorandum*. (It is to be Remembered,) *that on Wednesday next after fifteen Days of Easter, that same Term before the Lord the King, &c.*

Then you proceed to make your *Fi Fa* or or such Writ as is Requisite.



King's Bench.

A Declaration upon a Bond.

Michaelmas the Sixth of King George the Second.

Middlesex, ss.

Note, the o-
therwise called
ought to be Li-
teratum as in
the Bond.

*If you De-
clare on the
Sheriff's Bond
not assigned,
then say, Ac-
knowledge
himself to be
held, &c. to
A B, then
Sheriff of the
County afore-
said, being by
the Name of
A B, Esq;
Sheriff of the
County of M.
afore said, but
if the Bond be
assigned ac-
cordin- to the
late Act, you
declare as
Assignee of the
Serr. ff in the
manner fol-
lowing.

A B, complains of C D, otherwise called C D, of the Parish of St. Clement Danes, in the County of Middlesex, Gentleman, in Custody of the Marshal, &c. of a Plea that he render to him 100l. of lawful Money of Great-Britain which he owes to him and unjustly detains, for that to wit, that Whereas the aforesaid C, on the first Day of June, in the Sixth Year of the Reign of the Lord George the Second, now King of Great-Britain, &c. at the aforesaid Parish of St. Clement Danes, in the County aforesaid, by his certain Writing obligatory, Sealed with the Seal of him C, and now here shewn to the Court of the said Lord the King, the Date whereof is the same Day and Year, acknowledged himself to be held and firmly bound to the aforesaid A, in the *aforesaid 100l. to be paid to the same A, when he should be thereto required, notwithstanding the aforesaid C, altho' often requested, &c. the aforesaid 100l. to the aforesaid A, hath not yet paid, but that to him hitherto hath altogether denied, and still doth deny to pay; wherefore the aforesaid C, says that he is the worse, and has Damage to the Value of twenty Pounds, and thereof he brings his Suit, &c.

Somerwell, for
the Plaintiff
Weldon, for the
Defendant.

Pledges of
Prosecuting

} 70. Doe
} R. Roe.

A

A Declaration upon the Assignment of the Sheriff's *Bail Bond* to the Plaintiff, according to the *Statute* 4. and 5. *Anne*, for the Amendment of the Law.

London, ff. **A** B, Gentleman, Assignee to C D, Knight, late Sheriff of D, according to the Form of the Statute in the like Case lately made and provided, complains of E F, otherwise called, &c. in Custody of the Marshal, &c. of a Plea, that he render to him 100*l.* of lawful Money of Great-Britain, which he owes to him, and unjustly detains, for that to wit, that Whereas the aforesaid A, after the first Day of the Term of the Holy Trinity, in the Year of our Lord 1706. to wit, the 20th Day of June, in the Year of our Lord 1732. had prosecuted out of the Court of the said Lord the King, before the King himself, (the same Court then being at Westminster, in the County of Middlesex,) against the aforesaid E, a certain Writ of the said Lord the King, called a Latitat, to the then Sheriff of the County of D aforesaid directed; by which said Writ, the same Lord the King hath commanded the same then Sheriff of the County of D aforesaid, that he should take the aforesaid A, if he was to be found in his Bailiwick, and him safely should keep, so that he might have his Body before the said Lord the King, at Westminster, on next, after then next following, to Answer unto of the aforesaid A B, of a Plea of Trespass, and also

The Return
of the Latitat.

King's Bench. also of a Bill of the same A, against him E, for a Debt of Fifty Pounds, according to the Custom of the Court of him the Lord the King, to be exhibited before the King himself, which said Writ afterwards, and before the Return of the same, to wit (such a Day) in the Year of our Lord 1732 abovesaid, was delivered to the aforesaid C D, Knight, then Sheriff of the County of D aforesaid, at G, in the County of D aforesaid, to be entered in form of Law, by Virtue of which said Writ, the same C D, at that time being Sheriff of the County of D aforesaid, the aforesaid E, by his Body took and arrested, and him E, in his Custody then and there on the occasion aforesaid had and detained, and from the same A, so Arrested and under his Custody then being afterwards to wit the same (such a Day,) in the Year 1732 abovesaid, there took Bail for the appearance of him E, according to the Tenor of that Writ, and thereupon the aforesaid E, together with certain H J, of K, in the County of D, Teoman, L M, of K aforesaid, Teoman, N O, of P, in the County of D aforesaid, Teoman; afterwards to wit the same (such a Day,) in the Year of our Lord 1732 abovesaid, at London aforesaid, to wit in the Parish of the Blessed Mary of the Archies, in the Ward of Cheap, by his certain Writing obligatory, Sealed with the Seals of them E, H, L and N, and now shewn here to the Court of the Lord the King, the Date whereof is the same Day and Year last abovesaid; they became and each of them E, H, L, and N, by himself for the whole, and in every Part became held and bound to the aforesaid C D, then being Sheriff of the County of

The Date of
the Bail Bond.

of D, aforesaid, by the Name of C D, Knight, ^{King's Bench.}
 Sheriff of the County of D, aforesaid, in the
 aforesaid 100*l.* to be paid to the same Sheriff,
 or his Assigns, when he should be thereto re- ^{As it is in the}
 quired with a Condition to the same Writing, ^{Condition of the}
 obligatory underwritten, that if the aforesaid ^{Bail Bond.}
 E, should appear before the said Lord the King
 at Westminster, on Wednesday next, after
 fifteen Days of St. Martin then next following,
 to Answer to the aforesaid A B, Gentleman of
 a plea of Trespass; and also to the Bill of him.
 A, against him, E, for fifty Pounds of Debt,
 according to the Custom of the Court of the Lord
 the King, to be exhibited before the King him-
 self; that then, that Obligation should be void,
 and of none effect, otherwise it should remain
 in its full Force and Virtue; as by that Writing
 and that Condition, more fully appears, and
 the same A, further saith that the aforesaid E,
 hath not appeared before the Lord the King, at
 Westminster aforesaid, on Wednesday afore-
 said next, after fifteen Days of St. Martin
 aforesaid, according to the demand of the said
 Writ, and the form and effect of that Condi-
 tion, by which the Writing Obligatory aforesaid,
 to the same Sheriff, because forfeited; and the
 same Sheriff afterwards to wit (such a Day) ^{The Date of}
 in the Year 1732 above said, at L, aforesaid, ^{the Assignment,}
 to wit in the Parish of the Blessed Mary of the
 Arches, in the Ward of Cheap aforesaid, at
 the Request and Charges of him. A, by a cer-
 tain Indorsement in Writing, bearing date the
 same Day and Year last above said; upon that
 Writing made and Indorsed, and under the
 Hand and Seal of him C D, in the presence of
 two Credible Witnesses to wit, (the Names of
 the

Declarations in Debt.

King's Bench. the Witnesses) then and there attested, according to the form and effect of the Statute aforesaid, hath assigned to the same A, the aforesaid Writing obligatory, for the appearance of the aforesaid E, as is aforesaid, taken according to the form of the Statute aforesaid in the like Case, lately made and provided; which said Indorsement be the same A, brings here in Court the Date, whereof is the same Day and Year last abovesaid; by reason of which said Premises, according to the form of the Statute lately made, and provided an Action hath accrued to the same A, as Assignee of the aforesaid C D, then Sheriff of the County of D, aforesaid, as aforesaid, being to require and have of the aforesaid E, the aforesaid 100*l*. Notwithstanding the aforesaid E, altho' oftentimes required, &c. the aforesaid 100*l*. to the aforesaid C, or to the same A, or either of them hath not yet paid, but that to them hitherto to pay wholly refused and that to the same A to pay still refuses to the Damage of him. A 20*l*. and on this Account brings his Suit &c.

} Pledges, &c.

If against any of the Sureties of E F then thus.

London, ss. **A** B Assignee of C D Esq; late Sheriff of the County of D, according to the form of the Statute in the like Case,

Case, lately made and provided. Complaints King's Bench,
against J S otherwise called, &c. in Custody
of the Marshal, &c. (as before to the taking
of Bail) and thereupon the aforesaid J S toge-
ther with the foresaid E F and certain, (&c.)
afterwards (to wit) became bound for appear-
ance of E F as is in the other, and so sets
forth, that the Principal did not appear, and
that the Bond became forfeited and assigned,
&c. by which the Action accrued to the Plain-
tiff, against the Defendant, &c. as in the
other.

Upon a Bill Penal.

London, ff. **A** B, complains of C D, other-
wise called, (&c.) in Cu-
stody of the Marshal, &c. of a Plea, that he ren-
der to him twenty Pounds of lawful Money of
Great-Britain, which he owes to him and un-
justly detains, for that to wit, that whereas the
aforesaid C, (such a Day and Year,) at the
Parish of the Blessed Mary of the Arches, in
the Ward of Cheap, by his certain Bill obliga-
tory, Sealed with the Seal of him C, and now
here shewn to the Court of the said Lord the
King, and dated the same Day and Tear, hath
acknowledged himself to owe to the aforesaid A,
ten Pounds, to be paid to the same A, in and
upon the first Day of May then next following,
after the Date of the same Bill; and to the
same Payment well and truly to be made, the
same C, hath bound himself, his Heirs, Exe-
cutors and Administrators in the penal Sum of
twenty Pounds, firmly by the same Bill; and
the aforesaid A avers, that the aforesaid C,
hath

King's Bench. *bath not paid to the same A, the aforesaid ten Pounds, in and upon the aforesaid first Day of May, which he ought to have paid to him in and upon the same Day, according to the Force and Effect of the Bill aforesaid, by which an Action accrewed to the same A, to demand and have of the aforesaid C, the aforesaid twenty Pounds, yet the aforesaid C, altho' oftentimes required, &c. the aforesaid twenty Pounds to the aforesaid A, bath not yet paid, but that to him hitherto to pay altogether bath refused, and still doth refuse to pay, to the Damage of him A, twenty Pounds, and thereon he brings his Suit, &c. If it be upon a Bill without Penalty, then say (as last before unto) at the Parish, (&c.) by his certain Writing obligatory, Sealed with the Seal of him C, and now here shewn to the Court of the said Lord the King, the Date whereof is the same Day and Tear, bath acknowledged himself to owe to the aforesaid A, the aforesaid twenty Pounds, to be paid to the same A, his Executors, Administrators or Assignees, at or upon the first Day of May then next following, the Date of the Bill obligatory aforesaid, and to the same Payment well and truly to be made, the aforesaid C, bound himself, his Heirs, Executors and Administrators firmly by the same Bill, yet the aforesaid C, altho' oftentimes required, bath not yet paid the aforesaid twenty Pounds to the aforesaid A, &c.*

- If you bring your Action against two or more for one Debt due on the same Specialty.
- you must observe whether the Specialty be joint or several, if joint then your Declaration

in

must be, that they render jointly to the Plain-King's Bench. tiff so much Money, &c. but if the Specialty be as is most usual, jointly and severally, as we bind us, our Heirs, Executors and Administrators, and every of us; then you must deliver so many several Declarations, as there are Defendants in the Writ, otherwise it is pleadable in Abatement.

A Declaration by a Clerk of the Office.

Middlesex, to wit, **A** B, Gentleman, one of the Clerks of Edward Ventris, Esq; Chief Clerk of the Lord the King, assigned to Inrol Pleas in the Court of him the Lord the King, before the King himself, according to the Liberty and Priviledge for such chief Clerks, and their Clerks, from the time whereof to the Contrary, the Memory of Man is not used and approved of in the same present here in Court, in his own proper Person complains against C D, in Custody of the Marshal, &c. for that to wit, that Case. Debt. whereas, &c.

Or — in Custody of the Marshal, &c. of a Plea, that he render unto him Ten Pounds which he owes to him and unjustly detains, (&c. as the Case is.)

Against an Attorney of the Court.

Middlesex, ff **A** B, complains of C D, Gentleman, one of the Attornies of the Court of the Lord the King, before the King himself, present here in Court in his own proper Person, for that to wit, that Case. whereas

Declarations in Debt.

King's Bench. *whereas, &c.* these may serve Pro and Con;
(for and against) *Mutatis Mutandis*, (changing where it is to be changed) and conclude with Pledges of prosecuting *John Doe* and *Richard Roe*, at Length.

See the Statute for that purpose.

Declarations for Goods sold and delivered.

Middlesex, ss.

A B, complains of C D, in Custody of the Marshal, &c. for that to wit, that whereas the aforesaid C, the Tenth Day of October, in the Year of our Lord, one Thousand, seven Hundred and Thirty-one, at the Parish of St. Clement Danes, in the County of Middlesex, had been indebted to the same A, in seventeen Pounds of lawful Money of Great-Britain, for diverse Goods, Wares and Merchandizes, of him A, by him A, to the same C, and at his special Instance and Request, before that time sold and delivered. And being so thereof indebted, the aforesaid C, afterwards to wit, the same Day and Year aforesaid, at the Parish aforesaid, in the County aforesaid, in consideration thereof, upon himself, and assumed to the same A, did then and there faithfully promise, that he the aforesaid C, the aforesaid seventeen Pounds to the same A, when he should be thereto afterwards required, would well and truly pay and content. And also whereas the aforesaid C D, afterwards to wit the same Day and Year aforesaid, at the Parish aforesaid, in the County aforesaid, in Consideration that the aforesaid A, at the like special Instance and Request of him C, had sold and delivered to the same C, diverse other Goods, Wares

Quantum
Valebant for
other Goods
sold.

Wares and Merchandizes of him A, took upon King's Bench. himself, and to the same A, did then and there faithfully promise, that he the aforesaid C, all such Sums of Money (or so much Money) as such Goods, Wares, and Merchandises last mentioned, at the time of the Sale and delivery of them reasonably were worth to the same A, when he should be thereto afterwards required, would well and truly pay and content; And the aforesaid A avers, that those Goods, Wares and Merchandises last mentioned at the time of the Sale and Delivery of the same, were reasonably worth another Sum of Seventeen Pounds of like lawful Money of Great-Britain, to wit at the Parish aforesaid, in the County aforesaid; and thereof the aforesaid C, afterwards to wit the same Day and Tear aforesaid, at the Parish aforesaid, in the County aforesaid, had Notice: And also whereas the aforesaid C, afterwards to wit the same Day and Tear aforesaid, at the Parish aforesaid, in the County aforesaid, had accompted together with the aforesaid A, of and concerning diverse Sums of Money to the same A, by him C, before that time due and unpaid; and upon that Account the same C, then and there was found in Arrear towards the same A, in another Sum of Seventeen Pounds of like lawful Money of Great-Britain, and so being found thereof in Arrear, the aforesaid C, in Consideration thereof, afterwards to wit the same Day and Tear aforesaid, at the Parish aforesaid, in the County aforesaid, hath taken upon himself, and to the same A, bath then and there faithfully promised that he the aforesaid C, the aforesaid Seventeen Pounds last mentioned to the same A,

*Insist
Compute, set for
Money due on
Account.*

O

when

Declarations in Case.

King's Bench. *when he should be thereof afterwards required, would well and truly pay and content; the aforesaid C, nevertheless his several promises and undertakings aforesaid, in form aforesaid, made little regarding, but contriving and fraudulently intending the same A, in this behalf, craftily and subtilly to deceive and defraud the aforesaid several Sums of Money, or any part thereof to the same A, hath not as yet paid, nor for the same hath any way contented him, altho' to do this, the aforesaid C, afterwards to wit the same Day and Year abovesaid, at the Parish aforesaid, in the County aforesaid, and often afterwards by the same A, he was required, but that to him hitherto to pay, or for the same any way to content he hath absolutely refused and still refuses, wherefore the same A, saith that he is the worse, and hath Damage to the Value of Seventeen Pounds, and therefore brings Suit, &c.*

For the Plaintiff }
For the Defendant } Pledges, &c.

Declaration for Money laid out, Money lent, and Money had and received.

Michaelmas, the Sixth of King George the II

Middlesex, to wit, **A** B, complains against **C D**, in Custody of the Marshal, &c. for that to wit, that whereas the aforesaid C, the tenth Day of January, in the Year of our Lord, one Thousand, seven Hundred and Thirty-two, at the Parish of St. Clement Danes, in the County of Middlesex, was indebted

indebted to the same A, in Ten Pound of lawful Money of Great-Britain, for the like Sum of Money by him A, for the same C, and at his special Instance and Request before that time, spent, laid out, expended and paid; and being so indebted, the aforesaid C, in consideration thereof, afterwards to wit the same Day and Tear abovesaid, at the Parish aforesaid, in the County aforesaid, took upon himself, and to the same A, then and there faithfully promised, that he the aforesaid C, would well and truly pay and content to the aforesaid A, the aforesaid Ten Pounds, when he should be afterwards thereto requested; and also whereas the aforesaid C, afterwards to wit the same Day and Tear abovesaid, at the Parish aforesaid, in the County aforesaid, had been indebted to the same A, in other Ten Pounds of like lawful Money of Great-Britain to the same C, by the aforesaid A, at his special Instance and Request, before that time lent and advanced; and being so thereof indebted, the aforesaid C, in Consideration thereof, afterwards to wit the same Day and Tear abovesaid, at the Parish aforesaid, in the County aforesaid took upon himself, and to the same A, did then and there faithfully promise, that he the same C, would well and truly pay and content to the same A, the aforesaid Ten Pounds last mentioned, when he should be thereto afterwards required: And also whereas the aforesaid C, afterwards to wit the same Day and Tear abovesaid, at the Parish aforesaid, in the County aforesaid, had been indebted to the same A, in other Ten Pounds of like lawful Money, for the like Sum of Money of him A, by the aforesaid C, for the same A, and

King's Bench.
The like for Money lent.
The like for Money had and received for the use of the Plaintiff.
for

O 2

Declarations in Case.

King's Bench. for the Use of him A, before that time had and received, and being so thereof indebted, the aforesaid C, in consideration thereof, afterwards to wit the same Day and Year abovesaid, at the Parish aforesaid, in the County aforesaid took upon himself, and then and there faithfully promised to the same A, that he the aforesaid C, the aforesaid Sum of Ten Pounds last mentioned to the same A, when he should be thereto afterwards required, would well and truly pay and satisfye; yet the aforesaid A, his several Promises and undertakings aforesaid, in form aforesaid made, little regarding but contriving and fraudulently, (&c. as before.)

Declaration for Work done, and Materials found and provided.

Trinity in the Sixth Year of George the King,

Middlesex, to wit, **A** B, complains of C D, in Custody of the Marshal, &c. for that to wit, that whereas the aforesaid C, the first Day of January, in the Year of our Lord one Thousand, seven Hundred and Thirty-one, at the Parish of St. Clement Danes, in the County of Middlesex, was indebted to the aforesaid A, in five and twenty Pounds of lawful Money of Great-Britain, as well for diverse Works and Labours of him A, by him A, for the same C, and at the special Instance and Request of him C, before that time done and performed, as for diverse Materials and things necessary of him A, by him A, for the aforesaid C, and at his like special Instance and request before that time, in and about the Works

Indebitatus
Assumpsit for
Work done
and Materials
found and pro-
vided.

Works and Labours aforesaid, found, provided, King's Bench.
and used. And the aforesaid C, being so thereof
Indebted, in Consideration thereof afterwards,
to wit, the same Day and Tear aforesaid, at
the Parish aforesaid, in the County aforesaid,
took upon himself, and to the same A, then and
there faithfully promised, that he the aforesaid
C, the aforesaid five and twenty Pounds, to the
same A, when thereto afterwards he should be
required, would well and truly pay and satisfye.
And also, whereas the aforesaid C, afterwards
to wit the same Day and Tear aforesaid, at the ^{Quantum} *meruit for*
Parish aforesaid, in the County aforesaid, in ^{other Work}
Consideration that the aforesaid A, at the like ^{done and other}
special Instance and Request of him C, before ^{materials}
that time had done and performed for the same ^{found.}
C, diverse other Works and Labours, and had
found, provided and used for the same C, diverse
other Materials and Things necessary in and
about those Works and Labours last mentioned,
took upon himself, and then and there faithfully
promised to the same A, that he the aforesaid
C, would well and truly pay and satisfy to the
same A, all such Sums of Money as he the
aforesaid A, for those Works and Labours last
mentioned, so as is before spoken, done and per-
formed; as for those Materials and Things ne-
cessary last mentioned, so as is before spoken in
and about those Works and Labours last men-
tioned, found, provided and used, he had reason-
ably deserved to have when he should be thereto
afterwards required. And the aforesaid A,
avers that he the aforesaid A, for those Works
and Labours last mentioned, as is before spoken
done and performed, and for the Materials and
Things necessary in and about these Works and

Declarations in Case.

King's Bench. *Labours last mentioned, so as is before spoken, found, provided and used, hath reasonably deserved to have of the same C, another Sum of five and twenty Pounds of like lawful Money of Great-Britain, to wit at the Parish aforesaid, in the County aforesaid, whereof the aforesaid C, afterwards to wit the same Day and Year aforesaid, at the Parish aforesaid, in the County aforesaid had notice, yet the aforesaid C, (as before.)*

—— For the Plaintiff, }
 —— For the Defendant. } Pledges.

*Quantum
 meruit for the
 Cure of a
 Wound.*

Averment.

Somerſet, ſſ. **A** B, complains against C D, in Custody of the Marshal, &c. for that to wit, that whereas the aforesaid A, (such a Day and Year) at E, in the County aforesaid, at the special Instance and Request of him C, him C, of a certain Wound in his Head then being, had cured, took upon himself and then and there faithfully promised to the same A, that he the same C, would well and truly pay and satisfy to the same A, such a Sum of Money as the aforesaid A, reasonably deserved for the like Cure of the Wound aforesaid, when thereto afterwards he should be required. And the aforesaid A, avers that he giving credit to the Promises and Undertakings of the aforesaid C, in form aforesaid made, afterwards to wit — (such a Day and Year) at E, in the County of S aforesaid, cured the aforesaid C, of the Wound aforesaid, and for that Cure reasonably deserved five Pounds of lawful Money of Great-Britain, and thereof then and there gave to the same C Notice.

After

After this you may addan *Indebitatus* as- King's Bench.
sumpsit for Medicines, &c. thus.

And also whereas the aforesaid C, afterwards
to wit the same Day and Year abovesaid, at E
aforesaid, in the County aforesaid, was indebted
to the same A, in other five Pounds, for diverse
Medicines, Plaisters, Ointments, and other
Wares to the same C, by the aforesaid A, be-
fore then sold and delivered, and the aforesaid
C, being upon this Account so indebted, be the
aforesaid C, in consideration thereof, after-
wards to wit the same Day and Year last above-
said, took upon himself, and then and there
faithfully promised the same A, &c. (as in the
Declaration next before,) and so may lay a
Quantum valerent, (or what they were worth)
for diverse Medicines, (&c.) sold and delivered.
assumed upon himself, and then and there faith- *Quantum*
fully promised the same A, that be the same C, *Valent.*
would well and truly pay and satisfye to the
same C, such Sums of Money as the Medi-
cines, Plaisters, Ointments and other Wares
aforesaid at the time of the Sale and Delivery
of them were reasonably worth, when he should
be afterwards thereto required. And the same
A avers, that the Medicines, Plaisters, Oint-
ments, and other Wares aforesaid, at the time
of the Sale and Delivery of the same were rea-
sonably worth other five Pounds of lawful Mo-
ney of Great-Britain, to wit at E, aforesaid, in
the County aforesaid, whereof the same C, after-
wards to wit the same Day, Year and Place had
Notice. (You may also inforce this by laying
it over again thus,) And also whereas the afore-
said A, afterwards to wit the same Day and

Declarations in Case.

King's Bench. *Tear last abovesaid, at E aforesaid, in the County aforesaid, at the special Instance and Request of him C, had sold and delivered to the aforesaid C, diverse other Medicines, Plaisters, Ointments and Wares, &c. (as before unto) had Notice, (but this seems rather to be to enlarge the Declaration than for necessity.) Nevertheless the aforesaid C, his several Promises and Undertakings aforesaid, little regarding, but contriving and fraudulently intending, &c. (as before.)*

Here also may be joined a *Mutuatus* for other Money, if need be.

Declaration on a Promissory Note, payable on demand.

Michaelmas the Sixth of King George the II.

*The Date
of the Note.*

Middlesex, to wit **A** **B**, complains against **A** **C** **D**, in Custody of the Marshal, &c. for that to wit, that whereas the aforesaid C, after the first Day of May, in the Tear of our Lord one Thousand, seven Hundred and Five, to wit the Twenty-first Day of December, in the Tear of our Lord, one Thousand, seven Hundred and Thirty-one, at the Parish of St. Clement Danes, in the County of Middlesex, made his certain Note in Writing, commonly called a promissory Note with his proper Hand therunto subscribed, bearing Date the Day and Tear last abovesaid, which said Note the aforesaid C, to the aforesaid A, did then and there deliver, and by the same Note hath promised to pay to the aforesaid A, by the Name of Mr. A B, or his Order on demand
the

the Sum of Thirty and Eight Pounds for Value ^{King's Bench} received, by Reason of which said Premises, and also by Force of the Statute in the like Case thereof made and provided, the same C, became chargeable to pay to the same A, or his Order, the aforesaid Thirty and Eight Pounds upon demand, according to the Tenor of the aforesaid Note. And the aforesaid C, being so lyable in Consideration thereof, afterwards to wit, the same Day and Tear last above said, at the Parish aforesaid, in the County aforesaid; took upon himself, and then and there faithfully promised to the same A, that he the aforesaid C, the aforesaid thirty and eight Pounds, would well and truly pay and satisfy to the same A on demand. And the aforesaid A avers, ^{*It is usual to add an In-} that he at any time after the making of that ^{debitat as-} Note, hath hitherto made no Order of or con- ^{sumpsit for} cerning the Payment of the Sum of Money aforesaid, in the Note aforesaid contained, or of or ^{Money had and received.} ^{— and an} concerning the Payment of any part thereof, ^{indebitat as-} ^{sumpsit for} ^{Money laid out}

*Nevertheless the aforesaid (as before.)

Easter the Fifth of King George the II.

Middlesex, to wit, J C, complains of G H, ^{A Declara-} in Custody of the Mar- ^{tion en a Pro-} shal, &c. for that to wit, that whereas the ^{missory Note,} aforesaid G, after the first Day of May, in the ^{indorsed to a} Tear of our Lord one Thousand, seven Hundred, ^{third Person} and Five, to wit on the Twenty-seventh Day of ^{vn the Stat.} December, in the Tear of our Lord one Thousand, seven Hundred and Thirty-one, at the Parish of St. Clement Danes, in the County of Middlesex, made his certain Note in Writing called a Promissory Note, with his own proper Hand

Declarations in Case.

King's Bench. *Hand subscribed thereto, bearing Date the Day and Tear last abovesaid; and then and there delivered the same Note to one E B, by which said Note the aforesaid G, promised to pay to the aforesaid E B, (by the Name of Mr. E B,) or to his Order, the Sum of Six Pounds within two Months after the Date of the same Note, being for Value received as the same Note manifestly appears; and the aforesaid Sum of Money, mentioned in the aforesaid Note or any part thereof, not being paid or satisfied to the said E B, he the said E B, afterwards to wit the same Twenty-seventh Day of December, in the Year of our Lord one Thousand seven Hundred and Thirty-one abovesaid, at the Parish aforesaid, in the County aforesaid, by a certain Indorsement in Writing, then and there made on the said Note, and then and there subscribed with the proper Hand of him E B, assigned the aforesaid Note to the beforementioned J, and by the same Indorsement, ordered and appointed the aforesaid G, to pay to the same J, the aforesaid Sum of Money in that Note specified, according to the form and effect of the same Note, and the Indorsement thereon so as aforesaid made; whereof the aforesaid G, afterwards to wit the Day and Tear last abovesaid, at the Parish aforesaid, in the County aforesaid had Notice, by Reason of which said Premises, and also by force of the Statute in such Case made and provided, the same G, became chargeable (liable) to pay to the aforesaid J, the same Sum of Money mentioned in the aforesaid Note, according to the form and effect of the same Note, and the Indorsement thereon made; and the same G, being so chargeable therewith in consideration thereof*

thereof did afterwards to wit the same Day and ^{King's Bench.} Tear last abovesaid, at the Parish abovesaid, in the County abovesaid assume upon himself, and to the same J, did then and there faithfully promise that he the abovesaid G, would well and faithfully pay and satisfy to the same J, the abovesaid Six Pounds last mentioned, when he should be thereunto afterwards required; yet the abovesaid G. in no wise regarding his several Promises and Assumptions (undertakings) abovesaid, so made to the said John, in the form abovesaid, but contriving and fraudulently Intending the same J. in this particular craftily and subtilly to deceive and defraud, hath not yet paid the abovesaid several Sums of Money, or any part thereof to the same J, nor any wise satisfied him for the same; (altho' to do this, the abovesaid G. afterwards to wit the Twenty-eight Day of February, in the Tear of our Lord, one Thousand, seven Hundred and Thirty-one abovesaid, and oftentimes afterwards, at the Parish abovesaid, in the County abovesaid, was requested by the abovesaid J.) but hitherto hath wholly refused, and still doth refuse to pay that to him, or in any wise to satisfy him for the same to the Damage of him A. Twenty Pound, and therefore he brings his Suit, &c.

A Declaration on behalf of an Attorneys
Executrix for Fees, &c.

Middlesex, to wit. **A** B, Executrix of the last Will and Testament of W. B. Gentleman deceased, complains of C. D. in Custody of the Marshal, &c. for
that

Declarations in Case.

King's Bench. *that to wit, that whereas (such a Day, Year and Place, &c.) in consideration that the aforesaid W. in his Life time being an Attorney of the Court of the said Lord the King, before the King himself, the said Court being then held at Westminster, in the County of Middlesex, the aforesaid W. by the space of three Terms, between or from (such a Day to such Day, &c.) had Prosecuted and Defended several Suits in the Court of the said Lord the King, before the King himself, (the same Court then being held at Westminster aforesaid, and had laid out and expended diverse Sums of Money in and about those Suits; he the aforesaid C. did take upon himself, and to the aforesaid W. in his Life time, then and there faithfully promised, that he the same C. would well and truly pay and satisfy to the aforesaid W. when ever he should be thereunto required, all such Sums of lawful Money of Great-Britain, as the aforesaid W. had laid out and expended; and also all other Sums of Money which the aforesaid W. should reasonably deserve to have for his just Fees, and for his Work and Labour by him used and employed in and about the Prosecution and Defence of the several Suits aforesaid. And she the said A. avers, that the same Day and Year aforesaid, at &c. aforesaid, the aforesaid W. expended and laid out the Sum of Twenty Pounds of lawful Money of Great-Britain, in and about the Prosecution and Defence of those several Suits aforesaid, and then and there reasonably deserved to have for his just Fees, and for his Work and Labour by him so as aforesaid used and employed in and about the Prosecution and Defence of those several Suits,*

the

the Sum of Seven Pounds and upwards of like ^{King's Bench.} lawful Money, whereof the said W. in his Life time did then and there give Notice to the said C. And also whereas, afterwards to wit, the same Day and Tear last abovesaid, at &c. aforesaid, the aforesaid C. was indebted to the aforesaid W. in his Life time, in other Twenty Pounds of like lawful Money, for such a Sum of Money by the said W. in his Life time, at the special Instance and Request of the aforesaid C. laid out and expended, in and about the Prosecution and Defence of several other Suits in the aforesaid Court; and also in other seven Pounds for Fees due to the said W. in his Life time, and for Work and Labour by him W. in his Life time done, used and employed, at the like Instance and Request of the said C. in and about the Prosecution and Defence of the said Suits last mentiond; and being so thereof indebted, the aforesaid C. in consideration thereof, did afterwards to wit, the same Day and Tear last mentioned, at &c. aforesaid, take upon himself, and to the said W. in his Life time then and there faithfully promised, that he the aforesaid C. would well and faithfully pay and content to the said W. when he should be thereto afterwards required, the said several Sums of Money last mentioned: Yet the aforesaid C. not regarding his said several Promises and Assumptions aforesaid, but contriving and fraudulently intending the aforesaid W. in his Life time, and her the said A. since his Decease craftily and subtilly to deceive and defraud in this particular, the aforesaid several Sums of Money or any Part thereof to the said W. in his Life time, or to the said A, since his the said W.

King's Bench. W. Death hath not yet paid, nor to the said W. in his Life, or to the said A. since his Death, in any manner hitherto satisfied, altho' he the aforesaid C. to do this hath been oftentimes requested by the said W. in his Life time, and by the said A. since his Death; to wit, (such a Day and Year at such a Place) aforesaid, wherefore the said A. sayth she is the worse, and has Damage, &c. And the aforesaid A. brings here into Court, the Letters Testamentary of the last Will of the aforesaid W. whereby it sufficiently appears to the Court, that the said A. is Executrix of the last Will of the aforesaid W. and hath the Execution thereof, &c.

The Intent of laying these Declarations so many different ways with a *Cumquetiam*, (and also whereas) is that upon the Trial the Plaintiff may rely upon that Count which his Witnesses are best able to prove; for if any one of the Counts laid in the Declaration be proved, it is sufficient for him to recover *pro tanto* (for so much.)

And one may join several Causes or Wrongs in one Action or Declaration, so they be of one Nature and against one Person, so one Action of the Case for diverse Promises, but Debt and Trespass, and Wrongs cannot be joined together in one Action, though against one and the same Person.

Upon the *Indebitatus Assumpsit* for Goods sold and delivered,* it is requisite the Plaintiff should prove more than one particular thing sold, and also to prove a Price agreed upon, otherwise the Action will not lye but on a *Quantum meruit*, you need only prove the Delivery of your Goods and their Value at the

the time of their Delivery; therefore in an ^{King's Bench} Action for Goods sold or Work done, it is most secure to lay a *Quantum meruit* with an *Indebitatus Assumpsit*; but if only one particular Comodity is sold, you must mention that Comodity particularly in the Declaration and not say, Goods sold upon an *insimul Computassent*, you must lay in your Declaration the very Day of the Account, and the very Sum agreed upon by both Parties to be due, otherwise the Plaintiff will be Nonsuited.

Somerſet, to wit. **A** B. Complains of C. D. Trover.

A in Custody of the Marshal, &c. for that to wit, that whereas the aforesaid A. the tenth Day of May, in the sixth Year of the Reign of the Lord, King George the Second, now King of Great Britain, &c. at L. in the County aforesaid, was possessed of the Goods and Chattels following, to wit, of one Feather-Bed, (Naming the Goods) to the Value of forty Pounds, as of his own proper Goods and Chattels, and being so thereof possessed; afterwards to wit the same Day and Year abovesaid, at L. aforesaid, in the County aforesaid; those Goods and Chattels he Casually lost, and was deprived of out of his Hands and Possession; which said Goods and Chattels so lost afterwards, to wit the same Day and Year above-said, at L. aforesaid in the County aforesaid, by finding came to the Hands and Possession of the aforesaid C. Nevertheless the aforesaid C. knowing the Goods and Chattels aforesaid, to be the Goods and Chattels of him A. and to him A. of right to belong and appertain, yet contriving and fraudulently intending the

Though you cannot prove an actual Conversion yet a demand and refusal to deliver the Goods demanded is a sufficient Evidence of a same Conversion.

King's Bench. *same A. in this particular, Craftily, and Subtily to deceive and defraud the Goods and Chattels aforefaid, tho' oftentimes required, &c. to the same A. hath not yet delivered, but the Goods and Chattels aforefaid, afterwards to wit, on the Sixteenth Day of May, in the Sixth Tear abovesaid, at L. aforefaid, in the County aforefaid; converted and disposed to his own proper Use. Whereupon the same A. sayth, that he is the worse, and hath Damage to the Value of Sixty Pounds, and thereof brings Suit, &c.*

Trover and Trespafs cannot be brought in one Declaration, neither can Trover and Assumpsit.

Declaration in Trespafs for breaking his Close, eating up and treading down his Grass, with a Continuando.

Trespafs. Somerset, to wit. **A** B. Complains of C. D. *in Custody of the Marshal, &c. for that he C. the first Day of May, in the Sixth Tear of the Reign of the Lord George, now King of Great Britain, &c. with Force and Arms, &c. the Close of him A. called Whiteacre, at E. in the County aforefaid, broke into and entred, and the Grass of him A. to the Value of one Hundred Shillings, lately growing with certain four footed Beasts, to wit, with Horses, Cows, Hogs and Sheep, Eat up, trod down and Consumed, and continued the said Trespafs at diverse Days and Times; in so eating up, treading down and consuming the Grass of him A. there growing from the said first Day of May, in the Tear aforefaid*

aforesaid, untill the first Day of September King's Bench.
 then next following, and other Enormities,
 then and there did to him, to the grievous Da-
 mage of him A. and against the Peace of the
 said Lord the now King, from whence the same
 A. saith that he is the worse and hath Da-
 mage to the Value of forty Pounds, and thereof
 he brings his Action, (or Suit) &c.

In Assault and Battery.

Somerfet, to wit. **A** B. Complains of C. D.
 in Custody of the Mar-
 shal, &c. for that, that he the first Day of May,
 in the Sixth Year of the Reign of the Lord
 George the Second, now King of Great Britain,
 &c. with Force and Arms, to wit with Swords,
 Staves and Knives, made an Assault upon him
 A. at E. and him did then and there beat,
 wound and evilly treat, so that his Life was
 greatly despaired of, and other Enormities then
 and there did to him against the Peace of the
 said Lord, the now King, from whence the same
 A. saith that he is the worse, and hath Da-
 mage to the Value of twenty Pounds, and there-
 of he brings Suit, &c.

In Assault, Battery, and Imprisonment.

M ADE an Assault, and him A. did beat, Battery and
 wound, imprison and evilly treat, and the Imprisonment.
 aforesaid A. in Prison, without any reasonable
 Cause against the Will of him A. and against
 the Law and Custom of this Kingdom of Eng-
 land, for a great time (to wit) for the space of
 two Days, continued and kept and other Enor-
 mities

King's Bench *mities to him, then and there did against the Peace of the said Lord the now King; wherefore the same A. saith that he is the worse, and hath Damage to the Value of forty Pounds, and thereof Commences Suit, &c.*

Declaration for a violent Assault and Battery.

Kent, to wit. **A** B. Complains of C. D. in Custody of the Marshal, &c. for that, that he (such a Day and Year) with force and Arms, to wit, with Swords, Daggers, Staves, Clubs, Knives, &c. in and upon the same A. at &c. in the County aforesaid, made an Assault, and him A. did then and there wound, beat and evilly treat, and struck one blow so violently on the Head of the same A. that the same A. by the force of that Stroke, fell to the Ground, and the said C. him the said A. so lying on the Ground, did with many Strokes beat with his Fists and kick with his Feet on the said A's. Face, Belly and Sides, so that the said A. lay as one Dead, and by reason of the said Strokes for a great while to wit, for the space of three Months then next following, was dangerously ill and continued in great peril of the loss of his Life, and other Enormities to him A. he the said C. then and there did against the Peace of the Lord the King, to the Damage of him A. one hundred Pounds, &c.

Trinity the 6th, of King George the Second.

London, to wit. **J** T. Complains of S. J. in *A Declaration*
Custody of the Marshal, ^{tion for taking}
 &c. for that, that the aforesaid S. the tenth Day ^{away and Car-}
 of July, in the sixth Year of the Reign of the ^{nally know- ing} the Plaintiff's
 Lord George, now King of Great Britain, &c. Wife.
 with force and Arms, in and upon Sarah the
 Wife of him John at London aforesaid, to
 wit, in the Parish of the Blessed Mary of the
 Arches, in the Ward of Cheap, made an Af-
 fault, and her (the said) Sarah beat and
 evilly treated and also the same Sarah took,
 Carried away, Ravished and Carnally knew,
 and her from the same John for a great time,
 to wit, by the space of four Years against the
 Will him, (the said) John detained, whereby
 the same John the Comfort, fellowship Affis-
 tance, and aid of her (the said) Sarah for the
 whole time aforesaid, lost and was deprived of,
 and other Enormities (Hurts, Injuries) to the
 same Sarah, he did (brought) to the great
 Damage of him John, and against the Peace
 of the said Lord the King, wherefore (or for
 which the same John sayth, that he is hurt
 (or harmed, or Injured) and has a Damage,
 to the Value of five hundred Pounds, and there-
 of brings his Suit, &c.

James Arnold, for the	{	Pledges of	{	J. Doe.
Plaintiff.				
J. Basset, for the De-	{	Prosecuting	{	J. Roe.
fendant.				

Assault.

King's Bench. *And underwritten, a Warrant of Attorney for the Defendant, (to wit.)*

Mr. Basset.

I Desire you will Plead for me, to this Declaration not Guilty, and for your so doing, this shall be to you a sufficient Warrant, Dated 28th of January 1731.

Sam. Jones.

Witness

J. Hitches.

The like Declaration against a Prisoner.

London, to wit. **L** C. Complains of J. E. in Custody of the Marshal, of the Marshalsea of the Lord the King, being before the King himself; of that, that he the said John the first Day of March, in the fifth Year of the Reign of the Lord George now King of Great Britain, &c. and at diverse Days and Times then following, untill the 18th Day of October, in the sixth Year of the Reign of the said Lord the King, with Force and Arms, in and upon Martha the Wife of the said Luke at London aforesaid, to wit, in the Parish of the blessed Mary of the Arches, in the Ward of Cheap, made an Assault, and her Martha then and there Ravished, Compressed, Debauched and Carnally knew, and the same Martha from the same Luke for a long Time, to wit, for the space of six Months there (then following) detained, whereby the same Luke, the Comfort, Consortship and aid of his said Wife for the whole time aforesaid, lost and was deprived of, and other Enormities to the same Martha, he did to the great Damage

mage of him Luke, and against the Peace, &c. King's Bench.
(as above) to his Damage one thousand Pounds
and thereof, &c.

Basset by Burch,	}	Pledges of	{	7. Doz.
for the Plaintiff.				
The Defendant				
in Custody.	}	Prosecuting.	{	R. Roe.

Note, Affidavit must be made and filed
with the Declaration, that a Copy thereof
was left with the Prisoner, or at the Goal
pursuant to the Statute.

*Entry of an Issue in B. R. in an Action
for lying with the Plaintiff's Wife.*

In the Term of St. Hillary, in the fifth
Year of the Reign of the Lord George the
Second, now King of Great Britain, &c.
Roll the Hundredth and Fifth.

Ventris.

London, to wit. *I*T is to be Remembred that
heretofore to wit, in the
Term of St. Michael last past, before the Lord
the King at Westminster. Came J. T. by
J. S. his Attorney, and brought here into the
Court of the said Lord the King, then and
there his certain Bill against T. K. in Custody
of the Marshal, of the Marshalsea of the
Lord the King, before him the King being of
a Plea of Tre/pass and Assault, and there are
Pledges of Prosecuting, to wit, John Doe,
and Richard Roe, which said Bill follows in
these Words to wit. London, to wit, J. T.

P 3

Complains

King's Bench. *Complains of T. K. in Custody of the Marshal, &c. of that, that &c. (and so set forth the matter of Fact, and Place and Time of detaining the Wife, in manner as above to the Words) and thereof he brings his Suit, &c. (and then begin a new Line for the Plea thus)*

Not Guilty. And now at this Day to wit, Thursday, next after the Octaves, (i. e. the eighth Day of St. Hillary, i. e. the first of the Term) in this Term, untill which Day the said T. K. had leave (Lifence) to Imparling to the Bill aforesaid, and then to Answer, &c. before the Lord the King at Westminster, came as well the said J. T. by his Attorney aforesaid, as the aforesaid T. K. by B. R. his Attorney, and the same T. K. Defends the Force and Injury when &c. and sayth that he is in nowise Guilty of the Trespass and Assault aforesaid, so as the aforesaid J. T. above against him Complains, and of this he puts himself upon the Country, and the aforesaid T. likewise, &c. therefore let a Jury come thereupon, before the Lord the King at Westminster, (such a Day) (i. e. the Day whereon the Venire is to be returned) to take knowledge, &c. because as well, &c. the same Day is given to the Parties aforesaid, there (to appear,) &c.

Upon

Upon a Copy of this Issue left with the Defendants Attorney, a Notice of Tryal is usually Endorsed thus.

Mr. B.

TAKE Notice of Tryal in this Cause for the last Sitting in London, within this present Hillary Term, which will be on Tuesday the 10th of February next.

January the 29th,
1731.

From Yours,

B. B. for the Plaintiff.

Michaelmas, the Fifth Year of King George II.

Middlesex, to wit. **R** H. complains of W. K. *Another like Declaration*
in Custody of the Marshal, &c. for that, that the aforesaid W. withlaying the Fact
Force and Arms, &c. at the Parish of St. diverse ways.
Clement Danes, in the County aforesaid, upon
P. the Wife of him R. made an Assault, and
her then and there ravished, compressed, de-
bauched, whored and carnally knew, whereby
the same R. lost, and was deprived of the
Comfort and Fellowship of his Wife aforesaid;
and other Enormities to her he did, to the great
Damage and Hurt of the said R. and against
the Peace of the said Lord George the Second,
now King of Great-Britain, &c. And also
whereas, the said W. the first Day of June, in
the Year of our Lord, one Thousand, seven
Hundred and Thirty-two, and at diverse other
Days and Times (turns) between the said first
Day of June, and the Second Day of July, in

King's Bench. *the Tear aforesaid, with Force and Arms, &c. upon her the said P. the Wife of him R, at the Parish aforesaid, in the County aforesaid, made an Assault, and her (the said) P. then and there ravished, compressed, debauched, and carnally knew, whereby (the said) R. the Comfort and Society of his Wife aforesaid, by the whole time aforesaid lost and was deprived of; and other Enormities to her he did, to the great Damage of him R. and against the Peace of the said Lord the King, &c. wherefore the said R, sayth that he is worsted, and has Damage to the Value of 500 l. and therefore he brings his Suit, &c.*

Replevin.

Replevin.

(To wit.) **A** B. was summoned to Answer C. D. of a Plea, wherefore he took the Cattle of him C. and hath them unjustly detained against Gages and Pledges, &c. And therefore the same C, by R. G. his Attorney complains, that the aforesaid A. the first Day of May, in the Sixth Tear of the Reign of the Lord George, now King of Great-Britain, &c. at S. in the County aforesaid, in a certain Place there called Spring Close, took the Cattle of him C. to wit, two Oxen and three Cows, and hath detained them unjustly against Gages and Pledges, untill, &c. Wherefore the aforesaid C. sayth that he is injured, and hath Damage to the Value of 20 l. and thereon he brings Suit, &c.

A Replevin ought to be certain in setting forth the Number and Kinds of the Cattle distrained, or else it is not good, for if it be uncertain,

uncertain, the Sheriff cannot tell how to make ^{King's Bench} Deliverence of the Cattle, if a Writ be directed to him for that Purpose, therefore it ought to be expressly mentioned to that Intent in the Replevin.

See more of Declarations in the second Part.

Arrear on a Lease.

AND the aforesaid C. by R. E. his Attorney comes and defends the Force and Injury, when, &c. and well avows the taking of the Cattle aforesaid, in the aforesaid Place, wherein, &c. and justly, &c. because he saith that before the aforesaid time, wherein the taking of the aforesaid Cattle is supposed to be done, and at the time wherein they were so taken, he himself was seized of one Mesuage, forty Acres of Land, six Acres of Meadow, twenty Acres of Pasture, and four Acres of Wood, with the Appurtenances in S. aforesaid, whereof the aforesaid Place, wherein, &c. is, and at the aforesaid time, wherein, &c. was, parcel in his Demesne as of Fee. And being so seized thereof before the aforesaid time, wherein, &c. to wit, the Eighteenth Day of June, in the Sixth Year of the Reign of the now King, at S. aforesaid, did demise the aforesaid Tenements with their Appurtenances whereof, &c. to the aforesaid A. B. to have and to hold to him and his Assigns, from the Feast of St. Michael then next following, to the End and Term of seven Years from thence next following, yielding and paying therefore yearly to the aforesaid C. D. ten Pounds, at the Feast of the Annunciation of the Blessed Virgin Mary, by equal Portions;
by

King's Bench. *by Vertue of which said Demise, the aforesaid A. B. before the aforesaid time, wherein, &c. in and upon the Tenements aforesaid, with their Appurtenances whereof, &c. entered, and was thereof possessed; and because fifteen Pounds of the Rent aforesaid, for one whole Tear, and the half of a Tear, ending at the Feast of the Annunciation, next before the aforesaid time, wherein, &c. were in Arrear, and not paid to the said C. D. at the same time, wherein, &c. the same C. D. for the said fifteen Pounds of that Rent so being in Arrear, to the said C. doth well avow the taking of the Cattle aforesaid, in the aforesaid Place, wherein, &c. and justly, &c. as in parcel of the Tenements aforesaid, which with the Appurtenances were bound, and charged to be distrained on by the said C. in the form aforesaid.*

*Plea in bar
that no Rent is
in Arrear.*

And the aforesaid A. B. saith, that the aforesaid C. by reason of the Allegations aforesaid, cannot justly avow the taking of the Cattle aforesaid, in the aforesaid Place, wherein, &c. because he saith that the aforesaid fifteen Pounds of the Rent aforesaid, at the time wherein, &c. was not in arrear or unpaid to the aforesaid C. nor any Penny thereof at the time wherein, &c. as the same C. hath in his avowry aforesaid above alledged was in arrear to the aforesaid C. and prays that this may be enquired of by the Country, and the aforesaid C. likewise; therefore it is commanded to the Sheriff of S. that the Cause to come here from the Day of St. Martin (next) in fifteen Days, twelve, &c. by whom, &c. and who neither, &c. to take knowledge, &c. because as well, &c.

A Replevin is grounded on a Distress, King's Bench. and is a Remedy provided that the thing may remain with the first Possessor, upon his Security given till the Right of distraining be made to appear, and the Party suing it gives Security to pursue the Action and return the Goods, Cattle, &c. again if the taking be adjudged lawful. *Replevin.*

By Statute, 2 *W.* and *M.* where Goods are distrained for Rent, and the Tennant shall not in five Days after Notice replevy the same, the Person distraining with the Sheriff, Constable, &c. may Cause them to be Appraised and sold to satisfy the Rent.

And by 8 *Anne* where Goods are fraudulently conveyed from an Estate they may be taken in Distress in five Days wheresoever found.

Note, a Distress may be taken for part of the Rent where the Goods are not sufficient to satisfy it, and an Action of Debt for the Remainder whereby both the Goods and Person are made lyable.

A Declaration in Ejectment.

Somerfet, to wit. *A* B. complains of C. D. *To serve this Declaration in*
in the Custody of the Ejectment on
 Marshal, &c. for that to wit, that whereas a Tennant of
 E. F. Gentleman, on the tenth Day of October, a Lord of Par-
 in the fifth Tear of the Reign of the Lord liament, or
 George, now King of Great-Britain, &c. at Members of
 W. in the County aforesaid, had demised, Commons dur-
 granted, and to farm let to the aforesaid A ing the Prive-
 five Mesuages and five Gardens (reciting the ledre is breach
 Parcels) thereof.

Ejectment.

King's Bench. *Parcels*) with the Appurtenances situate, lying and being in the Parish (the Place where) in the County aforesaid, to have and to hold the Tenements aforesaid, with the Appurtenances to the aforesaid A. and his Assigns, from the eighth Day of October then last past, untill the full end and term of five Tears from thence next following, and fully to be compleat and ended. By Vertue of which said demise, the same A. entered into the Tenements aforesaid, with the Appurtenances, and was thereof possessed, until the aforesaid C. afterwards to wit, the same tenth Day of October, in the fifth Tear aforesaid, by Force and Arms, &c. in the Tenements aforesaid, with the Appurtenances in and upon the Possession of him A. thereof entered, and him A. from his holding (farm) aforesaid, (his term aforesaid therein being not yet ended,) ejected, expelled and amoved. And him the aforesaid A. being so thereof ejected, expelled, and amoved, hath thereon kept him out of, and still doth keep him out of his Possession; and other Enormities he hath then and there done to him, against the Peace of the said Lord the now King, and to the Damage of him A. ten Pounds, and therefore brings Suit, &c.

Burton, for the Plaintiff.

Stanwell, for the Defendant. } Pledges, &c.

Mr. G. H.

I Am informed that you are in Possession, or Claim Title to the Premises in this Declaration of Ejectment mentioned, or to some Part thereof, and I being sued in this Action

Ejectment.

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as casual Ejector, and having no Claim or King's Bench Title to the same, do advise you to appear next *Hillary* Term, in his Majesties Court of *King's-Bench* at *Westminster*, by some Attorney of that Court, and then and there by Rule made of the same Court, to Cause your self to be made Defendant in my stead, otherwise I shall suffer Judgment therein to be entered against me, and you will be turned out of Possession.

If the Declaration be in London or Middlesex then say the first Day of next Hillary Term.

I am Yours,

January 5th, 1731.

C. D.

Note, the Defendant is not arrested on these Ejectments, but they being usually to try a Title, the first Defendant is some Friend to the Plaintiff, and at the bottom of this Declaration or backside in his Name, this Notice is given to the Tenant in Possession to defend his Title.

A Copy of this Declaration with the Subscription or Notice must be delivered before the Essoin Day of the ensuing Term to the Tennant in Possession himself, or to his Wife; (a Delivery to a Son, Daughter or Servant is not good, unless it appear by Affidavit to the Court, that the Tennant acknowledged the Receipt of such Declaration,) the Person that delivers it must read the Subscription or Notice to the Tennant, or may tell him the Contents thereof, and that unless he forthwith shall procure some Attorney of the *King's-Bench* to appear for him and defend his Title,

(if

Ejectment.

King's Bench. (if he hath any,) he shall be turned out of Possession.

Sometime in the ensuing Term, you give a Rule to plead with the Clerk of the Rules, and if the Tennant does not appear and enter into the Rule by consent, which is hereafter set forth, you must first in order to entitle your self to have Judgment against the casual Ejector, make the following Affidavit of the service of the Declaration in Ejectment.

The Affidavit.

A B. maketh Oath, that he did on the — Day of — deliver a Copy of the Declaration hereunto annexed unto G. H. Tennant in Possession of Part of the Premises in the said Declaration mentioned. And also on the same Day did deliver one other Copy of the said Declaration unto D. the Wife of E. F. one other Tennant in Possession of the other Part of the Premises in the said Declaration mentioned. And this Deponent further saith, he told them severally that it was a Declaration in Ejectment, and unless they did appear by some Attorney of the Court of *King's-Bench*, this present *Hillary* Term, there would be Judgment thereupon against the Defendant by Default, and they would be turned out of Possession, or Words to that Effect.

Jurat ... die
.... Coram me

A. B.

Upon this Affidavit *at the latter End of King's Bench
the Term you move the Court, that unless *If in Lon-
the Tennant in Possession will enter into such den or Mid-
Rule, Judgment may be entered against the dlesex you may
casual Ejector; the Clerk of the Rules upon move the Court
this Motion keeps the Affidavit and Declara- the beginning
tion annex, so that it is proper you have of the Term,
another fill'd up by you. because the
Tennant has
but a few Days
in Term to
appear and
plead.

You draw up a Rule with the Clerk of the
Rules for Judgment against the casual Ejector,
and unless the Tennant within the time given
by that Rule does not appear and enter into
the Rule by consent, Judgment may be en-
tered against the casual Ejector by default,
and then a Writ of Possession issues out, as
you may observe before in the Judgment en-
tered in Ejectment.

But if the Tennant will appear and enter
into the Rule by consent, it is proper his At-
torney should first take the following Autho-
rity.

*The Warrant to the Tennants Attorney to
appear and plead.*

Mr. K.

Apppear for me to this Declaration, and
make me Defendant in the Room of
C D. the Nominee Defendant, and enter in-
to the Common Rule for confessing the Lease,
Entry and Oulster, and thereupon plead Not
Guilty; and for your so doing this shall be
your Warrant and I hereby promise to pay
you your Fees and Disbursements.

G. H.

Then

King's Bench.

Then the Tenant's Name must be inserted in the following Rule, and he is made Defendant in the Declaration in the room of the other Defendant, and must Plead not Guilty, and insist upon his Title only at the Trial, &c. otherwise Judgment may be Entred by Default.

The Rule by Assent is thus.

Hillary, in the fifth Year of King George.

A. B. a- *It is ordered on the Assent of the Attornies*
 gainst C. D. *of both Parties, that G. H. may be made*
 for ten Mesu- *Defendant in the place of the now Defendant*
 ages naming *C. D. and appear without delay, at the Suit*
 the Parcels *of the Plaintiff, and put in Common Bail, and*
 in G. in the *County of S. by*
 County of S. *Receive a Declaration in a Plea of Trespass*
 the Demise of *and Ejectment for the Tenements in Question,*
 R. T. *and shall Plead thereto not Guilty without delay,*
 The Court *and upon Trial of the Issue, shall (confess) ad-*
 will not com *mit Lease, Entry and Ouster, and insist upon*
 pell the Defen- *his Title only, otherwise Judgment shall be*
 dant to enter *entred for the Plaintiff, against the now De-*
 into a Rule for *endant C. D. by default, and if upon Trial*
 more Lands or *of the Issue aforesaid, the same G. do not*
 Tenements in *Confess, Lease, Entry and Ouster, by which*
 the Declarati *the Plaintiff cannot further Prosecute his Bill*
 on mentioned *against the Defendant, then no Costs or Charge*
 than are in his *upon such like Non Prosses, shall be adjudged.*
 Possession. *But the aforesaid G. shall pay to the aforesaid*
Plaintiff, the Costs and Charges to be thereupon
Taxed; and it is further Ordered, that if up-
on Trial of the Issue aforesaid; a Verdict shall
be given for the Defendant G. H. or if it shall
happen, the aforesaid Plaintiff cannot further
Prosecute

Prosecute his Bill aforesaid, because if any King's Bench. other Cause, than for not Confessing, Lease, Entry and Ouster aforesaid, that then the Lessor of the Plaintiff shall pay to the aforesaid G. the Costs and Charges to be adjudged in that behalf.

Both the Attornies } P. for the Plaintiff.
sett their Hands. } K. for the Defendant.

The Attorney for the Defendant signs this Rule, and leaves it at one of the Judges Chambers, and pleads the general Issue, Not Guilty; which Rule the Attorney for the Plaintiff takes away and subscribes likewise his Name, and then carries it to the Clerk of the Rules, who thereupon makes out a Rule which differs but little from this; or if you know the Attorney concern'd for the Tenant, you may to save your Client the expence of moving the Court against the casual Ejector, apply to him to enter into the Rule by consent without such Motion.

After this Rule is drawn up by the Clerk of the Rules, on the Rule by consent signed by the Attornies you deliver your issue, with a Copy of such Rule enter your Proceedings, make up your Record and sue out your *Venire* and *Distringas* as is before directed.

If an Ejectment be brought for non Payment of Rent, the Defendant may on Motion or by Summons before a Judge have the Proceedings stayed upon Payment of the Rent and Costs.

Note, If the Plaintiff suffer a *Non Process* at the Assizes because the Defendant did not
Q confess,

King's Bench. confess, &c. It is said you need not Stamp the Record for Postea or Judgment, but only shew the Record from the Assizes, and Judgment will be signed upon the Rule by consent.

In this Title of Ejectment, it may be useful to speak something concerning Proceedings by Original.

*Proceedings
by Original.*

And Note, that Proceedings by Original are not so often used in this Court, the Attornies not being so well versed in that Method, as also it is more subject and liable to Errors. However in some Cases as in Ejectment, that Practice is very necessary to be understood, and seeing I do not find it set forth in any Books that treat of this Subject, I think it may be useful to insert it; the Method is much after the Manner of the Court of *Common Pleas*, and the Advantage is that a Writ of Error upon a Judgment in Ejectment by original cannot be brought or at least returnable but when the Parliament is sitting, which is of great use for the speedy getting into Possession; as you ought to have a *Latitat* to warrant your Ejectment brought in the usual manner by Bill in the Country, so in this way of Proceeding you ought to have an Original which is the Foundation of the Action. Draw a *Præcipe* which is the Instruction to the Cursitor of the County where the Land lyeth, or make the Original in this manner.

Somerſet,

Somerſet, to wit. **T**HE County where the King's Bench.
 Land lyeth) if A. B. *Pone for an*
 (to wit, the Plaintiff) hath made, &c. then *Original in*
 put, &c. T. D. (to wit, the Defendant,) late *Ejectment.*
 of F. in the County aforeſaid, Teoman. (Note
 you muſt put the Defendant's Addition or elſe
 it is Error,) to answer to the aforeſaid A. B.
 of a Plea, wherefore with Force and Arms into
 one Meſuage, one Hundred Acres of Land,
 Fifty Acres of Meadow, and Fifty Acres of
 Paſture, with the Appurtenances in G. (to wit,
 the Pariſh where the Land lyeth, and the
 Houſe and Land as you lay them in the De-
 claration.) which S. (to wit, the Leſſor of
 the Plaintiff, that is the Perſon that hath the
 Title in him,) hath demised to the aforeſaid
 A. B. for a Term which is not yet paſt, hath
 entered, and him from his Farm aforeſaid hath
 ejected, and other enormities, &c. to the gre-
 vious Damage, &c. and againſt the Peace, &c.
 returnable in eight Days of St. Hillary, where-
 ſoever, &c. into the King's-Bench.

Carry this Precipe or Inſtruction to the
 Curſitor of the County where the Land lyeth,
 at the Curſitors-Office in Chancery-Lane, for
 which you pay him Two Shillings and Six-
 pence; the Original muſt be returnable on a
 general Return Day, as in the Octaves of St.
 Hillary, and may be the firſt Return of the
 Term whereof your Declaration is, that is, if
 you have Judgment againſt the caſual Ejector,
 for that the Tennant doth not enter into a
 Rule and Plead, then your Original muſt be
 againſt the caſual Ejector; but if the Tennant
 appear and plead, then your Original muſt be
 made againſt the Tennant, and not againſt the

Ejectment.

King's Bench. casual Ejector; which Original you must get returned by the Sheriff to whom it is directed, although the Practice is usually for the Plaintiff's Attorney to return the Original, and after it is returned it ought to be filed with the *Custos Brevium* of the King's-Bench.

The Form of a Declaration in Ejectment
by Original.

Michaelmas the Fifth of King George.

The Court will not Permit the Plaintiff in Ejectment to amend his Declaration though before pleaded, but he must stand or sell by it, or deliver a new Declaration; neither will the Court give Costs where it appears that there was only one Declaration delivered, and no proceedings thereon, but when several Declarations have been delivered and no proceedings on neither, there they give Costs for the Executions of such Proceedings.

Southton, to wit. **C** Charles Draper, (the Defendant, (late of Petersfield, in the County of Southampton, Teoman, was attached to answer unto A. B. (the Plaintiff) of a Plea, wherefore with Force and Arms, &c. he hath entered into one Mesuage, one Orchard, one Barn, Fifty Acres of Land, Fifty Acres of Meadow, Fifty Acres of Pasture, with the Appurtenances in E. (the Parish where the Land lyeth) in the County aforesaid, which J. S. (the Person that hath the Title in him) to the same A. B. demised for a Term which hath not yet past, and him from his Farm aforesaid hath Ejected, and other Enormities brought to him, to the grievous Damage of him A. B. and against the Peace of the Lord the now King, &c. And wherefore the same A. B. by J. P. his Attorney complains, that whereas the aforesaid J. S. the tenth Day of October, in the fifth Year of the Reign of the said Lord the now King, at E. aforesaid, (the same Parish where the Land lyeth,) had demised to the same A. the Tenements aforesaid, with the Appurtenances to have and to hold the Tenements aforesaid,

aforesaid, with the Appurtenances to the same ^{King's Bench.} A. B. and his Assigns, from the ninth Day of October then last past, unto the full end and term of five Tears from thence next following, fully to be compleat and ended; by Vertue of which said demise the same A. B. entered into the Tenements aforesaid with the Appurtenances, and was thereof possessed. And the same A. B. being so thereof possessed, the aforesaid C. D. (to wit, the Defendant,) afterwards to wit, the same tenth Day of October, in the fifth Tear aforesaid, with Force and Arms, &c. into the Tenements aforesaid, with the Appurtenances which the aforesaid J. S. (to wit, the Lessor,) to the same A. B. in form aforesaid, hath demised for the Term aforesaid, which hath not elapsed hath entered, and him A. B. from his Farm aforesaid Ejected, and other Enormities, &c. to the grievous Damage, &c. and against the Peace, &c. wherefore sayth he is dampni-
 fied, and has damage to the value of ten ^{No Pledoes when by Original.} Pounds, and thereof he brings his Suit, &c.

Then write Notice to the Tenant or Tenants in Possession, as in the former Instructions in Ejectment, and serve it before the Effoin Day of the ensuing Term—Make your Affidavit of Service of the Declaration, (for which see before) and move for Judgment against the casual Ejector, and draw up the Rule if the Tenant do not appear, and leave a Rule at the Judges Chamber.

And if the Rule be left, then take it from the Judges Chamber, and enter it with the Clerk of the Rules as before, and write your Declaration a new, Copywise for your Issue,

*The Rule by consent on an Original is the same as the foregoing Rule, only you leave out (and put in Common Bail,) and in stead of (his Bill) insert (his Writ.)

King's Bench. which must be of the same Term, (to wit of Hillary) your first Declaration being of Michaelmas, and then instead of C. D. the casual Ejector, your first Defendant, put in the Name of the new Defendant mentioned in the Rule, left in the Judge's Chamber and his Addition; for that is necessary in this Action, and so alter the Declaration as to the Defendant's Name, and leave out the Notice to the Tenant; as in the former Instructions, and the Defendant's Attorney must Plead not Guilty.

Note you should write the Declaration Copywise, and make the Defendant's Attorney a Copy thereof, for which he now pays Six-pence a Sheet, then draw up your Issue; but you must not begin *Memorandum quod*, (It is remembred that) &c. but leave out all the *Memorandums* (It is to be remembred) and begin as the Declaration begins, and then the Impar lance as follows. *And the aforesaid C. D. (the new Defendant) by J. C. his Attorney comes and Defends the Force and Injury when, &c. and saith that he is in no wise Guilty of the Trespass and Ejectment aforesaid, so as the aforesaid A. B. (the Plaintiff) above, against him Complains, and of this puts himself upon the Country; and the aforesaid A. B. likewise, &c. It is therefore Commanded to the Sheriff, that he cause to come before the Lord the King, in the Octaves of the Purification of the blessed Mary (the last return of the same Term) wheresoever the said Lord the King shall then be in England twelve, &c. by whom, &c. and who neither, &c. to take knowledge, &c. because as well, &c. the same Day*

is given to the Parties aforesaid, &c. Deliver King's Bench. a Copy of this Issue to the Defendant's Attorney, for which he must also pay you Sixpence a Sheet, and for entring Plea and Warrant of Attorney, two Shillings and Eightpence, he should also pay for Enttring the Rule, two Shillings, it being his Rule, not the Plaintiff's; and give him notice of Trial as before.

Here note, that your *Venire* which is mentioned at the End of the Imparlance, must be returnable on a general return Day, as in the *Returnable* *Octaves of the Purification of the blessed wherefoever.* Mary, as in the *Common Pleas*, but it must be also *wherefoever we shall then be in England*, in which it differs from the *Common Pleas*; and the true Reason of this difference is, because in antient Times, the Court of King's Bench was not fixed or held in any particular certain Place, as now it is, but follow'd the King's Court, and was held where-ever the King was; and also you must observe, that all your other Writs in this way of Proceeding, as well the *Distringas* before the Trial, as the Writ of Possession and other Executory Writs after the Trial, must also be returnable on a general return Day, *wherefoever we shall then be in England*, and the *Jurata* of the Record of the *Nisi Prius*, must be as after mentioned: Having made your *Venire* returnable, on a general return Day, *wherefoever we shall then be in England*; you must get it returned by the Under Sheriff, and then make out your *Distringas* as in the former Proceedings, only it must be returnable on a general return Day, *as in fifteen Days from the Day*

King's Bench, of Easter, wheresoever we shall then be in England, (to wit) the first return of the ensuing Term, then make up your Record, of
 1 *Placita* which the first *Placita* (pleas) must be exactly as in the other way, only you must leave out the *Memorandum* (It is to be Remembred) and begin with the Declaration as you did in the Issue.

After you have Engrossed the Declaration and Plea, and the second *Placita* (Pleas) is inserted you come to the Jurat, which must
Jurat. be (the *Jury between A. B. by his Attorney Plaintiff, and C. D.* (addition as in the Declaration) of a *Plea of Trespass and Ejectment, is put in respect before the Lord the King wheresoever the said Lord the King shall then be in England, until from the Day of Easter, in fifteen Days* (to wit the return of the *Distingas*) and the rest as in the other Jurat.

Seal. You Seal the Record at the same Office in *Grey's Inn*, and pay the same Fees, then draw your Breviat, in which you make a short Recital of the Declaration, and add the Plea, and that the Defendant is to Confess, Lease, Entry and Ouster, by Rule of Court, &c.

Breviats. Many unexperienc'd Attornies, are much defective in their Breviate, the most approved way is, first write in the Margent, or in the
Plaintiff's Title. Middle; the Plaintiff's Title, then begin with the Person that was Seized in Fee of the Premisses in Question, and under whom the Lessor of the Plaintiff your Client Claims, and Deduce the Title carefully and orderly from such Persons so seized to your Client, setting forth the Dates and Contents of the Conveyances, and observe how they are Executed

ecuted, whether by Livery of Seizing, or by *King's Bench.*
 Inrollment, or by Lease and Release, or by
 Fine and Deed of uses, or if your Client be *Deeds prov'd.*
 in by Purchase, and take particular care how
 to prove the Deed as the Law requires, the
 Chirograph of a Fine, proves itself, and so
 doth a Deed Inroll'd according to the Statute,
 and so doth every antient Deed, where Pos-
 session hath gone accordingly.

If all the Witnesses to a later Deed are *Witnesses.*
 Dead, you must endeavour to prove they are
 Dead, and that their Names set as Witnesses
 to the Deed, are of their Hand Writing, and
 to prove the Grantor's Hand; and sometimes
 it is necessary, if it be not an old Title to
 prove the Person Seized and in Possession
 under whom you Claim.

If you Claim by Will, which is not proved *Will.*
 in Chancery, a Copy of the Will out of the
 Spiritual Court, is no Evidence for that pur-
 pose, but you must have the Will itself out
 of the Office, which the Proctors there, will
 put you in a Way to obtain upon Security;
 and if the Will be proved in Chancery, you
 must have a Copy of the Bill, answer and De-
 positions, and prove them true Copies Exa-
 mined with the Records, but if the Wit-
 nesses to such Will are living, they must prove
 the same *Viva Voce*, or else make proper Af-
 fidavits, that they are in an ill state of Health,
&c. to induce the Court to read such Depo-
 sitions.

If your Client be in by Discent, prove the *Discent.*
 Ancestor seized in Fee, under whom you claim
 and set forth and prove your Pedigree, and
 likewise draw it in the form of a Pedigree in
 the

King's Bench. the Margent of your Declaration, that your Counsel may apprehend it without perplexity.

Copyhold. If the Estate be Copyhold, you must prove it part of such a Manor, and you must prove the Admissions to be true Copies of the Court Roll. When you have set forth your

Defendant's Title. Clients Title and your Proofs, it is a good way also to sett forth the Defendants Title, or pretended Title, so far as you can come to the knowledge of it, that your Counsel may be in some measure informed and prepared

What Titles triable by Ejectment. for it ; all Titles cannot be tried by Ejectment, for where the Entry is taken away, an Ejectment lieth not, as by *Disseisins* and *Discents*, Fines and Recoveries, and Non Claims and Limitations, which are not here to be treated of ; and therefore if your Client Claim by a stale Title, as above twenty one Years standing, and be not helped by Non-Age, *Oustre le Mere* Imprisonment, Coverture, &c. you will be in danger to fail in your Action, and the like in Cases of Fines and Non-Claims, so that it is safest to have the Advice of Counsel before Trial, if the Question be any thing Intricate.

Plaintiff consulted.

And also observe, that if the Lessor of the Plaintiff doth not prove a good and absolute Title in himself, he will be Non-suited, though the Defendant have no Title at all, for the Defendants Possession will secure him.

And also if he can make appear, that a third Person not concerned in that Action, hath Title in him, that shall non-suit the Plaintiff.

Another

Another to be observed is, that the Plain-King's Bench. tiff is sometimes non-suited thro' Inadvertency, as for Instance.

If the Mortgagor make a Lease of the Pre-Mortgage. mises for seven Years, at an improved Rent, and sometimes after Mortgages, the Lands for Payment of a Sum of Money, with Interest at the expiration of a Year or two; the Money not being Paid, the Mortgagee brings his Ejectment against the Tenant to recover the Possession, to which the Tennant appears, and makes himself Defendant, and at the Trial produceth and proves the Lease, which being prior to the Mortgage, and not expired; the Plaintiff will be non-suited, though he hath a good Title, and by Virtue whereof, he might have compelled the Tenant to at-torn, if a right Method had been used.

These few Observations as is said before, are intended for young Beginners and unexperienc'd Practisers, and even sometimes the more able happen to be surprized by such Accidents.

After your Trial, call for your Record with the Postea Indorsed, and your Distringas, and give a Rule on the Postea, and tax the Costs, and enter your Judgment, and take out your Writ of Possession, as in the former Directions, only you must make your Writ returnable on a general return Day, *wherefore we shall then be in England as aforesaid,* and say *Whereas, &c. by our Writ, and not by Bill,* (and pay the Fine on the Capiatur to the Secondary's Clerk, before the Secondary will tax Costs, and so you must, if you proceed

King's Bench. proceed in the usual manner upon the *Latitat*, upon Action of Trespass.)

But if this Action be in *London* or *Middlesex*, you take the Record and Distringas from the Sociate immediately after the Trial is over, and Indorse the Postea on the Record your self.

See Instructions for entering up Judgments in other Actions.

Writ of Error.

It is generally held, that if there be a Parliament in being, as by adjournment or prorogation, though not actually sitting, yet a Writ of Error returnable in Parliament time, may be sued out, and that the shewing the same to the Plaintiff's Attorney, is a Superfedeas.

Others think it ought to be allowed before it can have the effect of a Superfedeas.

But that Honourable Court is of so high a Nature, that great care must be taken to pay due respect and obedience to any Process there returnable.

OBSERVATIONS on delivering Declarations.

WHEN you have Bail as is before observed, the next thing, is to draw your Declaration, wherein, in special Cases there is often great Difficulty; and it is a Fee very usefully bestowed to advise with able Counsel upon the Declaration.

Many Causes do Miscarry, and many Delays and Charges happen by Demurrers, Arrests of Judgment and Writs of Error, for want of good advice on the Declaration at first, but Clerks (at least for some time) are Employed

Employed only in the General and usual King's Bench, forms of common Declarations, of which you may find many necessary Precedents here inserted.

You write the Term and Year of the King on the top of the Declaration, the County in the Margent, the Attorney's Name at the bottom, (Pledges of Prosecuting, &c.) as before observed, carry the Declaration (of which you must keep a Copy) to the Defendant's Attorney; you must deliver it before the Essoins Day of the ensuing Term (which is the first general return) or else you cannot compel him to Plead that Term, and he must pay you for it 4*d.* per Sheet, &c.

And note, if you do not deliver it before the rising of the Court, the last Day of the second Term, the Defendant may have Judgment and Costs (on a *non-profs* in manner as is hereafter mentioned) against the Plaintiff, for not Declaring in two Terms; and then you may bring an Action of Debt on the *non-profs*.

It was the antient Practice to write the Declaration on Parchment, and File it in the Office, for which they paid 4*d.* but now that is not done, except against Attornies and Prisoners; and when Writs of Error are brought, and the Declaration must be filed on Writs of Error the same Term it is of.

When you cannot find out where the Defendant's Attorney Lives, to deliver him the Declaration, you may Engross it on Paper and leave it in the Office, which will be as effectual as if you delivered it to the Attorney, but you ought to give notice, either to the

King's Bench. the Attorney when you can find him, or to the Defendant, or you may deliver the Declaration to the Defendant himself, or leave it at his House or Lodgings.

The first Day of the ensuing Term, you make up your Paper of Rules, writing the Term on the top, and then A. B. *against* C. D. and so all your Causes wherein you are for the Plaintiff one under another, and subscribe your Name at the bottom, carry your Paper to the Clerk of the Rules, and he will enter them, and give one peremptory Rule to Plead in about eight Days, you pay him 1 s. 4 d. for each Rule or Cause.

You must also remember to call on the Defendant's Attorney for a Plea, before the Rules for Pleading are out, and it is an usual and good way to demand such Plea by a Note in writing, in this manner.

Mr. C.

A
against B. } *The Plaintiff desires an Answer.*

Alcroft for the Plaintiff.

Jan. 2d. 1731.

Or otherwise that you expect a Plea.

You may search the Clerk of the Papers plea Books the fourth or fifth Day of the Term, to see whether the Defendant hath not put in a special Plea, as in Abatement or in Bar, &c. that you may lose no Time, and

for

for general Pleas, you search the Office Book King's Bench.
with Mr. Lantrow.

Of Delivering Declarations to Prisoners.

Formerly when the Defendant was committed to Gaol for want of Bail, unless the Plaintiff before the end of the two Terms next after the Arrest, did Cause the Defendant to be removed by *Habeas Corpus* to be charged in Court, the Prisoner upon Common Bail or appearance of Attorney was discharged from Imprisonment, to the Plaintiff's Prejudice; therefore by the Statute 4 and 5 W. and M. Cap. 21. It is Enacted, that where the Defendant is taken or charged in Custody upon any Writ out of the Courts at *Westminster*, and Imprisoned for want of Sureties for his Appearance; the Plaintiff before the end of the next Term after such Writ shall be returnable, may declare against such Prisoner in the Court out of which the Writ issued; whereupon such Prisoner shall be taken or charged in Custody, and may cause a true Copy thereof to be delivered unto such Prisoner, or to the Gaoler or Keeper of the Prison, or Gaoler in whose Custody such Prisoner shall be and remain, to which Declaration the said Prisoner shall appear and plead; but if he shall not appear and plead thereto, the Plaintiff in such Case shall have Judgment, as if the Prisoner had appeared and refused to Plead: That in all such Declarations against such Prisoners it shall be alledged in the Custody of what Sheriff, Bailiff, or Steward of any Franchise, or other Person having Return and Execution of

Of Delivering Declarations.

King's Bench, of Writs; such Prisoner shall be at the Time of such Declaration, which allegation shall be as good and effectual, as if such Prisoner was in the Custody of the Marshal of the Marshalsea.

The Judges of the Court of King's-Bench, have on this Act made the following Rule for delivering Declarations to Prisoners.

First, That no Copy of a Declaration be delivered to a Prisoner in Custody, before the Day of the Return of the Process, upon which the Defendant was taken or charged in Custody.

*See after the
Form of an
Affidavit.*

Secondly, That no Rule be given for the Defendant in Custody to appear and Plead to any Declaration against him, till an Affidavit be filed with the Clerk of the Rules of the Delivery of a Copy of such Declaration, and the time when, and the Person to whom the said Copy was delivered; and that the Defendant was arrested or charged in Custody by Process of this Court, returnable before the Delivery of such Copy, and that the time when such Affidavit was filed be entred upon the said Affidavit by the Clerk of the Rules, and a Copy of such Affidavit be produced to the Prothonotary or Secondary before Signing of Judgment.

*See after the
manner of do-
ing this.*

Thirdly, If a Copy of the Declaration be delivered against such Defendant, before one Month of Easter, or the Morrow of All Souls, and Affidavit thereof made and filed, and the Defendant doth not appear before the end of ten Days after Easter and Michaelmas Term respectively, Judgment may be entered against him

him, if Rules have been given. But if he ^{King's Bench} doth appear before the End of ten Days, after the Term, he shall imparl until the next Term (unless the Action be in *London* or *Middlesex*, and the Defendant be in Prison, within forty Miles of *London* or *Westminster*) then tho' he doth appear before the Expiration of *ten Days after the End of the Term*, he shall plead two Days before the Effoin Day of the next Term, and in Default thereof (Rules having been given) Judgment may be entred against him as aforesaid.

Fourthly, If a Copy of the Declaration be delivered against such Defendant, on or after *one Month of Easter*, in *Easter Term*, or *the Morrow of all Souls*, in *Michaelmas Term*, or in *Hillary*, or *Trinity Term*, and thereupon the Plaintiff give Rule to appear and answer; then must the Defendant appear two Days before the Effoin Day of the next Term; but if he does not appear within that Time, Judgment shall be given against him.

Fifthly, If a Writ be returnable in any Term, and a Copy of the Declaration has been delivered before the Effoin Day of the next Term, the Plaintiff, in such next Term may give Rules to appear and answer; and if the Defendant does not appear and plead upon the Expiration of the Rules, Judgment shall be given against him.

Sixthly, If the Declaration be not filed before the End of the next Term, after the Writ or Process (by which the Prisoner was taken or charged in Custody) is returnable, and Affidavit made and filed in Manner as aforesaid, before the End of *twenty Days* next

R

after

Of Deliberating Declarations.

King's Bench. after such Term; the Prisoner shall be discharged by common Bail signed by one of the Justices of this Court.

Seventhly, If any Goaler or Keeper of a Prison having received a Copy of a Declaration against any Prisoner in his Custody, shall suppress the same, and not deliver it forthwith to the Prisoner, an Attachment shall be issued against him.

John Holt, } { William Gregory,
William Dolben, } { Giles Eyre.

Before you deliver the Declaration to the Goaler or Keeper, you must engross it on Parchment with double 1 d. Stamp, and file it with the Clerk of the Declarations, then deliver a Copy on Paper with double 1 d. Stamp to the Goaler or Keeper, asking at the same Time, if the Defendant is a Prisoner or not, or you may deliver it to the Defendant himself in Custody; having done this, you make another Copy of the Declaration on double 1 d which must be annexed to the following Affidavit, before you can give a Rule for the Defendant to appear and plead.

*Affidavit of
the Delivery of
a Declaration
against a Pri-
soner.*

Affidavit of the Delivery of a Declaration against a Prisoner.

AB, of, &c. maketh Oath, That he this Deponent did on the second Day of May last deliver unto the Keeper or Goaler of the Goal-Prison of the County of Berks, a true Copy of the Declaration bereunto annexed, and the said Goaler or Keeper then confessed unto this Deponent, that the said Defendant was a Prisoner in the said Prison, and that he would deliver the Declaration to him; and this Deponent saith, That the said Defendant was arrested or charged

Of Delibering Declarations.

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*charged at this Deponent's Suit, by Vertue of a King's Bench
Lattitac issuing out of this Court, returnable
before the Delivery of the said Declaration.*

A. B.

Jurat (Sworn Day
of in the Year of our
Lord before me.

After you have sworn this Affidavit with the Declaration annexed, you may make a Copy of the Affidavit on double 6 d. Stamp, and another Copy of the Declaration on double 1 d. Stamp, and annex them together, then carry both Affidavits and Declarations to the Clerk of the Rules, who will keep the original Affidavit and Declaration annexed, and will write on the Bottom of the Copy of the Affidavit—*Examined with the Affidavit affiled*
Day of in the sixth Year of King George.

Then go to the Master of the King's Bench Office with this Affidavit and Declaration, and he will give you a Rule on the Affidavit, for Time for the Defendant to appear and plead; then you go back to the Clerk of the Rules, and he enters in his Paper the Rule given by the Master, and marks under the Rule on the Affidavit, *Entered*. And if the Defendant does not appear and plead, according to the Time given by the Rule (a Rule to plead being demanded) you sign your Judgment against the Defendant.

Note, You need not make any Affidavit of the Delivery of a Declaration against a Prisoner in Custody of the Marshal of the King's-
R 2 Bench,

Of Delibering Declarations.

King's Bench. Bench, but you give a Rule to plead of Course with the Clerk of the Rules, and the Defendant is obliged to plead when the Rule is out, which is in about eight Days, otherwise a Plea being demanded, you take your Judgment against him.

Note, If you charge a Prisoner in Custody of the Marshal in the Vacation Time, you must go to the Marshal's Book, and make an Entry, *That he may remain in Custody at the Suit of I. S. as you will see several Forms in that Book,* and the ensuing Term you declare against him in Custody.

The Manner of charging the Debt in Execution in Custody of the Marshal.

Having obtained your Judgment against the Defendant, you apply to the Clerk of the Rules for a Rule, in order to charge the Defendant in Execution, and he without Motion will draw you up such a Rule accordingly, for which you pay him 4 s. Make a Copy of the Rule, and serve the same on the Marshal, who will on your paying him 10 s. and 6 d. write on the Bottom of the Rule his Acknowledgment of the Defendant's being in his Custody, then enter a *Committitur* in the Marshal's Book with Mr. Lantrow, for which you pay him 2 d. in this Manner.

Feb. 1, 1731. London to wit, **C**D, otherwise called, &c. *If in Case for 50 l. in a Plea of Trespass on the Case, and here, &c.* is committed to the Custody of the Marshal of the Marshalsea, in Execution at the Suit of A. B. for 50 l. Debt, and 53 l. for Costs; and there to remain until, &c.

G. F. Attorney.

Then

Then make out a *Comittitur* on Parchment, in the same Manner as above, leaving out the Date in the Margent, and adding the Term and Number Roll of the Judgment, you file this *Comittitur* with Mr. *Hawley*, the Signer of the *Latitats*, for which you pay him 2 s. and he will deliver the *Comittitur* to Mr. *Lantrow*, who will enter it upon the same Roll your Judgment is of, after this Manner.

Afterwards to wit, **T***HE* *aforesaid* Wednesday next after fifteen Days of the Holy Trinity, that same Term before the Lord the King at Westminster, the *aforesaid* A. B. came in his proper Person, and the *aforesaid* C, then present here in Court, on the Petition of the *aforesaid* A, is committed to the Custody of the Marshal, &c. in Execution for the Debt and Damages *aforesaid*, there to remain until, &c.

Admission of a Guardian.

King's Bench.

When you admit a Guardian for an Infant before a Judge, to prosecute and defend, do in this Manner.

Take a Piece of Parchment like a Bail Piece, then write thus.

You must carry this to the Clerk of the Rules, and file and enter it with him, for it is no Record until you have done so, and the Clerk of the Rules will draw you a Rule upon this Admission.

Somerſet to wit, **I** B, who being under the Age of one and twenty Years, is admitted by the Court of the Lord the King, before the King Himſelf, by I. S. Gentleman, his Guardian, to prosecute and defend all and all Manner of Actions and Suits in the ſame Court depending at the Suit of W. B.

RAYMOND.

Of PLEAS.

Pleas are either Special or General.

A General Plea is pleaded on a little Piece of 2 d. ſtampt Paper, without Counſels Hand, only the De endant's Attorney's Name to it, and

and he pays the Plaintiff's Attorney for en-King's Bench. trying it, as in Case thus.

*HE hath not assumed by I. C. paid 16 d.
(or Not Guilty, It is not his Deed, he
owes Nothing, &c. as the Case is.)*

Jan. 4, 1732.

Forster for the Defendant.

Special Pleadings are drawn up in Form, setting forth the Matter pleaded at large, with an apt Conclusion to the Declaration or to the Action, as the Case is, and must be signed by Counsel, or else cannot be received. And by Rule of Court, *Mich. 2. W. & M.* such special Pleadings must be left with the Clerk of the Papers, and entered into the Book of the proper Clerk, and not delivered to, or received by the Attorney.

They are generally of two Sorts, Pleas in Abatement, which we may call Temporary, for they do not go to destroy the Action, but only stop it for a Time, until the Obstacle pleaded be removed. As to plead that the Plaintiff is excommunicated, or is outlawed, that doth not destroy the Action, but only suspend it till the Plaintiff takes of his Excommunication, or reverse the Outlawry, and then he may proceed in his Action. Or that the Plaintiff is an Alien Enemy; for he may be made a free Denizen, or naturalized, and then the Obstacle is removed.

A Misnomer of the Defendant's Christian Name or Surname, or naming him Executor when he is Administrator, the Plaintiff may

R 4

bring

King's Bench. bring a new Action without paying Costs by the right Name, or as Administrator.

Pleas in Abatement.

Pleas in Abatement are very various, for Instance; to the Name, the Addition Death, Covert Baron one of the Executors or Administrators not named. Infancy in Plaintiff or Defendant (tho' Infancy in the Defendant may also be given in Evidence at the Trial, and will nonsuit the Plaintiff tho' not pleaded) other Actions depending; Priviledge, That the Defendant is an Attorney of the Common-Pleas, and ought not to be sued in the King's-Bench (except the Plaintiff by an Attorney of the King's-Bench) and the like. Whereof in *Townsend's* Tables, and *Cornwall's* new Tables to the Entries, you will find References to good Precedents.

Formerly those Pleas were formerly merely Dilatory, and therefore it was enacted by *Stat. 4 and 5 Ann.* for the Amendment of the Law, that no dilatory Plea should be received in any Court of Record, unless the Party offering the same doth by Affidavit prove the Truth thereof, or shew some probable Matter to the Court to induce them to believe that the Fact of such dilatory Plea is true.

The Form of an AFFIDAVIT.

In the King's-Bench. A B against C D.

C D the Defendant in this Cause maketh Oath, That the Substance and Matter of Fact, in the Plea hereto annexed is true.

Another

Another FORM.

EF Gentleman maketh Oath, That the Liberty of E is in the County of S, and not in the County of M, as the Plaintiff by the Declaration hereunto annexed hath alledged.

But if the Plea be for a Filazer, or other Officer, there need not be any Affidavit, but a Copy of the Grant of the Office affixed to the Plea.

Note, Where a Declaration is delivered before the Essoin Day of the Term, the Defendant hath four Days in that Term to plead in Abatement; but if he plead not till after the four Days are expired, then it is after Imparance, within the four Days of the Term, the Plaintiff is bound to take it without Imparance; but after the four Days, an Imparance must be entered.

A Plea in Abatement must conclude to the Declaration, as, *This be is ready to make appear, wherefore prays Judgment of the Bill (or Declaration) aforesaid, and that, that Bill may cease.*

Or, if the Plaintiff be an Alien Enemy, *Wherefore he prays Judgment if the aforesaid A (the Plaintiff) ought to be answered to the Bill aforesaid, &c.*

It may not be amiss to insert one Precedent for our young Clerks Instruction.

Misnomer of the Surname.

AND the aforesaid Charles by James Bradley his Attorney comes and defends the Force and Injury, &c. (but you must not in *(quando)* (when) as in Pleas in Bar.) And prays Judgment of the Bill aforesaid, because he says, That he the aforesaid Charles is named and called by the Name of Charles Dolfon, and by the same Name and Surname from the Time of his Birth to this Time, was always known and called, and not by the Name of Charles Dodson, so as he is above-named in the Bill aforesaid; and this he is ready to make appear, wherefore he prays Judgment of the Bill aforesaid, and that, that Bill may be stayed.

The Replication.

AND the aforesaid A. B. saith, That for any Thing by the aforesaid Charles above in Pleading alledged, his Bill aforesaid ought not to be stayed, because he saith, That the same Charles is named and called, and on the Day of exhibiting the Bill aforesaid, was named and called, as well by the Name of Charles Dodson, as by the Name of Charles Dolfon, and prays that this may be enquired of by the Country, &c.

G. H.

The

The Defendant's Attorney must be cautious how he rejoins to the Plaintiff's Replication; for if he join Issue, and it be found against him, the Judgment is final. The usual Way is to demur to the Replication, and then the Judgment can be but a *Respondens Ouster*; that is, the Defendant shall plead another Plea, which may be either special or general, and such Plea must be pleaded in Days.

Note, That Pleas in Bar may destroy the Plaintiff's Action for ever, as if the Defendant pleads a general Release.

Also as a Plea in Abatement concludes to the Declaration, so in Bar it must conclude to the Action, as, *And this he is ready to make appear, wherefore prays Judgment if the aforesaid A. B. ought to have or maintain his Action aforesaid, thereof against him, &c.*

Special Pleas are left with the Clerks of the Papers, either with Mr. *Benton*, or Mr. *Russel*, to wit, with Mr. *Benton*, when the Plaintiff's Name begins with A, and with Mr. *Russel*, when the Plaintiff's Name begins with B. and so alternatively thro' the Alphabet; therefore when you are for the Plaintiff, you carry your Declaration to the Clerk of the Papers, and he will make up your Paper Book, or you may take a Copy of such Plea from him, and make it up your self copy-wise, and let him peruse it, and he

King's Bench. he will write a *Rule on the Side of the Book to this Purpose; that if the Defendant do not receive the Paper Book and return it to be entered in four Days, then the *Non pro's* may be entered, you pay the Clerk of the Papers Ten-pence per Sheet for the Paper Book, besides the Stamps.

** It is said that after the Rule to return the Paper Book is out, you may refuse to accept it without a new Rule, unless it be within one Day of the time, but then you may detain it four Days Inclusive.*

You deliver this Paper Book to the Defendants Attorney, and at the same time give him Notice of Tryal on the back of the Book; and if the Defendant's Attorney does not return the Paper Book according to the Rule, you take your Judgment and execute your Writ of Enquiry on the Day given for Tryal; but if he returns the Book in time and will stand to the Plea pleaded and pays you Eight-pence per Sheet for the Pleadings on his Part, you proceed to Tryal according to the Notice; but if the Defendant's Attorney will not proceed to Tryal, but demurs to the Plaintiff's Replication, he first scratches out at the bottom of the Replication, his joining Issue, and leaves a Demurrer in the Office, and returns the Paper Book to the Plaintiff's Attorney with Notice thereon that he has left a Demurrer in the Office.

Whereupon the Plaintiff's Attorney carries the Paper Book to the Clerk of the Papers, and he will add the Demurrer and Joinder in Demurrer, and then the Plaintiff's Attorney delivers the Paper Book again to the Defendant's Attorney, which if he does not return to the Plaintiff's Attorney in a Day, and pay him Eight-pence per fol. for the Pleadings on his Part, you Sign your Judgment, but if he does return it and pay you, you make an *In-*

capitur

capitur on the Roll and enter the Proceedings ^{King's Bench.} with Mr. *Lautrow*, then give your Roll to your Counsel, and he will move for a Concilium, and the Clerk of the Papers will mark in the Margent of the Record *Let.* (Read) you draw up the Rule thereupon with the Clerk of the Rules: Enter your Cause in the Clerk of the Papers Book, and serve the Rule on the Defendants Attorney, and make up the Books for the Judges: You pay each of their Clerks 2s. then by Counsel you argue the Demurrer, and if Judgment goes for the Plaintiff before the Expiration of the Notice for Trial, you may execute your Writ of Enquiry the same Day on which Notice was given for Trial, in pursuance of a Rule made 6 *Georgij* to the Effect following: Re-citing that *Whereas Plaintiffs were greatly delayed by the Defendants demurring after the Plaintiff had taken Issue upon the Defendants Plea, and had delivered the Paper Book with Notice of Trial according to the Practice of this Court, for that, that after Judgment obtained for the Plaintiff upon such Demurrer, there is not sufficient time in Term to give Notice of executing a Writ of Enquiry within the Term in which Judgment was obtained, therefore It is ordered that where the Plaintiff upon the Plea of the Defendant concludes ad patriam (on his Country,) and shall give Notice upon the Paper Book aforesaid; and thereupon to impede the Trial, the Defendant shall demur in Law upon the Replication, or to the Plea of the Plaintiff, and the Plaintiff shall join in such Demurrer, and be thereupon shall obtain Judgment; the Attorney for the Defendant shall be obliged to*

accept

King's Bench. *accept of Notice of executing a Writ of Enquiry of Damages, from the time given of Notice of Trial on the Paper Book as aforesaid.*

Note, It is said that the Defendant may upon his returning the Book with the Joinder in Demurrer, scratch out the Demurrer and Joinder, and give the Plaintiff his Book with the general Issue, without being obliged to accept of Notice of Trial, from the time being given on the Paper Book; but the Plaintiff may to prevent this delay upon the Defendants Plea coming in, move the Court that the Defendant may plead *Instante*, a Plea to stand to and not wave, draw up the Rule and serve it, and the Defendant will be confined accordingly.

Note, that if the Plaintiff refuses to reply, you may have a four Days Rule from the Master for that Purpose, which you enter with the Clerk of the Rules, and serve on the Plaintiff's Attorney, and if he does not reply in time, you sign your *Non profs.*

See several Precedents of *Non profs* after the Demurrers, and see at the End of the Issues and Demurrers concerning Paper Books made upon Demurrers, and on Issues to part of the Declaration and Demurrers; also the other Part of Issues.

Did not assume by one Defendant, and is not informed by another the same Term of the Declaration.

AND the aforesaid A. B. and E. by C. D. their Attorney, come and defend the Force and Injury when, &c. and the same A. sayth, that
he

he hath not assumed upon himself in manner King's Bench. and form so as the aforesaid J. above against him complains, and concerning this puts himself on the Country, and the aforesaid J. likewise, &c. and upon this the aforesaid J. prays that the aforesaid E. may likewise answer to his Declaration aforesaid; upon which the same Attorney of the aforesaid E. sayth that he is not informed by the aforesaid E. of any answer to be given thereof to the same J. in the Premises, nor sayth any other thing in bar or preclusion of the Action of him J. aforesaid, by which the same J. remains thereof against the same E. undefended. — By Reason of which the aforesaid J. ought to recover his Damages against the aforesaid E. on occasion of the Not Performance of the Promises and Assumptions aforesaid of the aforesaid E. &c. But because it is unknown to the Court of the said Lord the King, before the King himself, what Damage the aforesaid J. hath sustained on that occasion; therefore as well as to the trying the Issue aforesaid, between the aforesaid J. and the aforesaid A. above joined in form aforesaid, as to the enquiring what Damages the aforesaid J. hath sustained, as well by occasion of the Not Performing those Promises and Assumptions, as for the Costs and Charges by him about his Suit in this behalf put unto. Let a Jury come thereon before the Lord the King at Westminster, &c. as is others.

Confession

King's Bench.

Confessing the Action for part, and owes nothing by the Country for the Residue.

WHEN &c. and as to five Pounds of the aforesaid fifteen Pounds which the aforesaid (Plaintiff) above requires against him, by Vertue of the Bill aforesaid, the same (Defendant) saith that he cannot deny the Action of the aforesaid (Plaintiff.) Nor but that Bill may be the Deed of him (Defendant,) nor but he may owe the aforesaid (Plaintiff) the same five Pounds in manner and form, so as the same (Plaintiff) above against him thereof hath declared; therefore it is considered that the aforesaid (Plaintiff) should recover against the aforesaid (Defendant) the same five Pounds, and the aforesaid (Defendant) in Mercy, &c. and as to the aforesaid ten Pounds, Residue of the aforesaid fifteen Pounds, which the aforesaid (Plaintiff) above on Accompt requires against him, the same (Defendant) saith that he doth not owe the aforesaid (Plaintiff) the same ten Pound, nor any Penny thereof in manner and form, &c. and of this puts, &c. and because it is convenient and necessary that one only Taxation may be made of the Damages, for one intire Debt aforesaid, if it happens Judgment to be given of the aforesaid ten Pounds, which the same (Plaintiff) above in Accompt requires against the aforesaid (Defendant,) for the same (Plaintiff,) therefore Taxation of those Damages shall stay untill the aforesaid Plea of the same ten Pounds between the Parties aforesaid shall be tryed, &c. and as to the trying of the Issue aforesaid, let a Jury thereon come, &c. as in others.

Did

Did not assume to the second and third King's Bench.
Promise, and a Delivery of a Piece
of Woollen Cloth to the first Promise.

And when, &c. And as to the second and third Promises and Assumptions, in the Declaration aforesaid above contained, saith, That he hath not assumed upon himself in Manner and Form, so as the aforesaid *A B* above against him complains; and of this puts himself upon the Country, and the aforesaid *A* likewise. And as to the first Promise and Assumption, in the same Declaration above contained, the same *C* saith, That the aforesaid *A* ought not to have, or support his Action aforesaid thereof against him; because he saith, That after the making the Note and Assumption, in the said Declaration first mentioned, and before exhibiting the Bill aforesaid of him *A*. to wit, the thirtieth Day of *June*, in the Year of our Lord, One thousand seven hundred and thirty two aforesaid, he, the same *C*. gave and delivered to the aforesaid *A*. the Goods and Chattels following, to wit, One Piece of Drapery, called Woollen Cloth, to the Value of ten Pounds, in full Satisfaction and Discharge of the first Promise and Assumption aforesaid. Which said Goods and Chattels the aforesaid *A*. then and there, in full Satisfaction, and Discharge of the first Promise and Assumption aforesaid of the same *C*. had and accepted. And this he is ready to justify; wherefore prays Judgment if the aforesaid *A*, his Action

S

afore-

King's Bench. aforesaid thereof against him, ought to have, or maintain, &c.

Replication.

And the aforesaid *A B* saith, That he, for any thing by the aforesaid *C D* above in his Pleading alledged, ought not to be precluded from having his Action aforesaid against him, as to the first Promise and Assumption in the Declaration aforesaid above contained; because he protests that the aforesaid *C* hath not given, or delivered to the aforesaid *A*, the aforesaid Goods and Chattels, to wit, the aforesaid one Piece of Drapery, called Woollen Cloth. For Plea the same *A* saith, That he hath not had, or received the aforesaid Goods and Chattels in Manner and Form, so as the aforesaid *C* above in Pleading hath alledged; and he prays this may be enquired of by the Country: And the aforesaid *C* likewise, &c. Therefore for the trying as well that Issue, as the aforesaid other Issue between the Parties aforesaid above likewise joined; therefore let a Jury come, (*as in others.*)

Hath not assum'd within six Years.

And now, &c. And saith, That the aforesaid *A* ought not to have, or maintain his Action aforesaid thereof against him, because he saith, That the aforesaid *A* — Day of — in the sixth Year of the said Lord, the now King, exhibited his Bill aforesaid against him *C*; and that he the same *C*, at any Time within six Years next before the Day of exhibiting the Bill aforesaid, hath not assumed upon himself in Manner and Form, so as the aforesaid *A* above thereof against him

him complains, and this he is ready to justify; King's Bench. wherefore prays Judgment, if the aforesaid *A* ought to have or maintain his Action aforesaid thereof against him, &c.

And the aforesaid *A* saith, That he for *Replication*, any thing by the aforesaid *C* above in Pleading alledged, ought not to be debarred from having his Action aforesaid thereof against him, because he saith, That the aforesaid *C* within six Years hath assumed upon himself in Manner and Form, as the aforesaid *A* above against him *C* hath declared: And prays this may be enquired by the Country; and the aforesaid *C* likewise. Therefore let a Jury come thereon, &c. (*as in others.*)

Not assumed generally to Part, and not assumed within six Years to the other Part.

And the aforesaid (*Defendant*) by *AB* his Attorney, comes and defends the Force and Injury when, &c. And saith, That the aforesaid (*Plaintiff*) ought not to have, or maintain his Action aforesaid thereof against him, because he saith, That as to the first Promise and Assumption in the Declaration aforesaid, above supposed to be made, the same (*Defendant*) saith, That he hath not assumed upon himself in Manner and Form, so as the aforesaid (*Plaintiff*) above against him complains; and of this, puts himself upon the Country. And the aforesaid (*Plaintiff*) there- *This when Issue* of likewise, &c. And as to the Residue of *joined.* the Promises and Assumptions in the Declaration aforesaid, above supposed to be made,

King's Bench. the same (*Defendant*) saith, That he, the aforesaid (*Plaintiff*) at any Time within six Years next, before the Day of exhibiting the Bill aforesaid of the said (*Plaintiff*), hath not assumed upon himself in Manner and Form, so as the aforesaid (*Plaintiff*) above thereof against him complains : And this he is ready to make appear. Therefore, &c. (*as in others.*)

He hath fully administred.

And now, &c. (his *Action*, &c.) because he saith, That at the Time of exhibiting the Bill aforesaid, he had fully administred all and singular the Goods and Chattels which were the aforesaid *I*, at the Time of his Death, in his Hands to be administred, by which the aforesaid *C* cannot pay to the aforesaid *A* his Debt aforesaid : And this he is ready to make appear. Therefore, &c.

Replication.

And the aforesaid *A* (ought not to be precluded,) because he saith, That the aforesaid *C* hath, and at the Time of exhibiting the Bill aforesaid, to wit, (*such a Day and Year*), at &c. had diverse Goods and Chattels which were the aforesaid *I*, (*the Testator*), at the Time of his Death, in his Hands, to be administred to the Value of, &c. whereof the same *A* could satisfy the aforesaid Debt, to wit, at *S*, in the County aforesaid. And he prays that this may be enquired of by the Country : And the aforesaid *C* likewise, &c. Therefore let a Jury, &c.

He

He hath not Demised.

And now, &c. And the same C defends the Force and Injury when, &c. and saith, That the aforesaid A hath not Demised to the same C, the Messuage or Tenement aforesaid, and the rest of the Premisses, with the Appurtenances in Manner and Form, so as the aforesaid A above against him complains; and of this puts himself upon the Country, and the aforesaid A likewise. Therefore let a Jury come, &c.

Hath not Detained.

And now, &c. And the same C defends the Force and Injury when, &c. and saith, That he hath not Detained from the aforesaid A, the Goods and Chattels aforesaid in the Declaration aforesaid specified, nor any Parcel thereof in Manner and Form, so as the aforesaid A above against him complains; and of this he puts himself upon the Country, and the aforesaid A likewise, &c. Therefore let a Jury come, &c.

He hath appeared to the Day, to a Bail Bond.

And now, &c. defends the Force and Injury when, &c. and prays the Hearing of the Writing Obligatory aforesaid, and it is read to him, &c. He also prays the Hearing of the Condition of the same Writing, and it is

King's Bench. read to him in these Words, (*to wit,*) The Condition, &c. *setting forth the whole Condition; also he may set forth the Obligation, if it be to his Advantage.* Which being read and heard, the same C saith, That the aforesaid A ought not to have, or maintain his Action aforesaid thereof against him, because he saith, That after the making of the Writing Obligatory aforesaid, and before the Day of Exhibiting the Bill aforesaid of him A. to wit, the — Day of, &c. — (*being the Appearance Day,*) next following after the Date of the Writing Obligatory aforesaid, the aforesaid C appeared before the said Lord, the now King, to answer to the aforesaid A in the Plea of Debt aforesaid, according to the Form and Effect of the Condition of the Writing Obligatory aforesaid; and this he is ready to verify, by the Record of the Bail thereof in the Court of the said Lord the King now, before the King himself at *Westminster* aforesaid remaining. Wherefore he prays Judgment, if the aforesaid A ought to have or maintain his Action aforesaid, &c.

Another in Trespass.

Because he saith, That he hath appeared before the Lord the King at *Westminster* aforesaid, the aforesaid — Day of — to answer to the aforesaid A in the Condition aforesaid above named, of the aforesaid Plea of Trespass, according to the Form and Effect of that Condition; the Appearance of which said C, in the Court of the said Lord the King, before the King himself at *Westminster*,
 was

was then and there recorded, as by the Re- King's Bench
cord thereof in the same Court of him the
Lord the King, before the King himself at
Westminster aforesaid remaining, manifestly
appears; and this he is ready to make ap-
pear by that Record. Wherefore he prays
Judgment if the aforesaid *A*, &c.

(Ought not to be precluded,) because he *Replication.*
saith, That no such Record is to be had of
the Appearance of the aforesaid *A*, made
before the said Lord the King at *Westminster*
aforesaid, on the — Day of — remain-
ing in the same Court of the said Lord the
King at *Westminster* aforesaid, as he the said
C above hath alledged; and this he is ready
to make appear. Wherefore he prays Judg-
ment, and his Debt, together with his Da-
mages, by occasion of the detaining of that
Debt, to be adjudged to him, &c.

Replication in Trespass and Case. — Wherefore
he prays Judgment, and his Damages, by
means of the Trespass aforesaid, (or by means
of the Premises,) to be adjudged to him, &c.

And the aforesaid *C* saith, That such a Re- *Rejoinder.*
cord is to be had of the Appearance of him *C*,
made before the King himself at *Westminster*
aforesaid, on the — Day of — in the
aforesaid Court of the said Lord the King,
before the King himself, at *Westminster* a-
foresaid, remaining as he hath above al-
ledged; and this he is ready to make appear
by that Record, &c. Therefore it is com-
manded to the same *C*, that he have here
(such a Day,) that Record at his Peril.

Conditions performed to a Bond.

And now, *Etc.* and prays, *Etc.* which being read, *Etc.* ought not to have his Action, *Etc.* because he saith, That he, the same *C*, in and upon the first Day of *May*, in the Condition aforesaid, above specified, paid to the aforesaid *A*, the aforesaid twenty Pounds, in the same Condition above-mentioned, which he ought to have paid to him at the same Day, according to the Form and Effect of the said Condition, to wit, at, *Etc.* and this he is ready to make appear; wherefore prays, *Etc.*

Replication. Plaintiff, (ought not to be precluded,) because he saith, That the aforesaid *C*, upon the aforesaid first Day of *May* above-mentioned, hath not paid to the aforesaid *A*, the twenty Pounds aforesaid in the Condition aforesaid above mentioned, according to the Form and Effect of the Condition aforesaid, in Manner and Form as the aforesaid *C* above in Pleading hath alledged; and he prays that this may be inquired of by the Country, and the aforesaid *A* likewise. Therefore let a Jury come, *Etc.*

Under Age.

And now, *Etc.* (ought not to have his Action,) because he saith, That the same *C*, at the Time of making the Writing Obligatory aforesaid, was under the Age of One and Twenty Years, (to wit of the Age of Seventeen Years, and no more.) And this, (*Etc.*) Therefore, *Etc.*

The

The (*Plaintiff*) (ought not to be precluded) King's Bench because he saith, That the aforesaid C, at the Time of making the Writing Obligatory aforesaid, was of the full Age of One and twenty Years, in Manner and Form so as the aforesaid C above in Pleading hath alledged. And prays that this may be enquired of by the Country, and the aforesaid C likewise. Therefore, &c.

Or thus, under Age.

And now, &c. ought not to have his Action, &c. because he saith, That he the same C, at the Time of making the several Promises and Undertakings in the Declaration aforesaid, above-mentioned, was under the Age of One and twenty Years. And this, &c. Therefore, &c.

By Hardships.

And now, &c. And saith, That he ought not to be charged with the Debt aforesaid, by Virtue of the Writing aforesaid, because he saith, That he at the Time of executing the Writing aforesaid, was imprisoned by the aforesaid A, and others of his Confederacy, to wit, at B, in the County aforesaid, and there detained in Prison, until the same C, by the Force and Hardships of that Imprisonment, that Writing to the aforesaid A then and there made, sealed, and as his Act and Deed to the same A delivered. And this, &c. Wherefore he prays Judgment, if he ought to be charged with the Debt aforesaid, by Virtue of the Writing Obligatory aforesaid, &c.

(Ought

King's Bench:
Replication.

— (Ought not to be precluded) &c. because he saith, That the aforesaid C at the Time of Executing of the Writing aforesaid, was of his own Right at large, and out of any Prison, and made, sealed, and as his Act and Deed, delivered that Writing of his own mere and free Will, to the same A; and not by Force, and Hardships of Imprisonment, so as the aforesaid C above in pleading hath alleged. And prays that this may be enquired of by the Country, and the aforesaid C likewise, &c. Therefore, &c.

By Threats.

When, &c. ought not have his Action, &c. because he saith, That the aforesaid A, at the Time of the Executing the Writing Obligatory aforesaid to the same C, such and so many Threats of his Life, and disabling of his Limbs, to be brought on him, unless he would make and seal to the aforesaid (*Plaintiff*), the Writing aforesaid, which was imposed on him at E aforesaid; which Writing aforesaid, the same C, for fear of those Threats to the aforesaid A, then and there made. And this, &c. Wherefore, &c.

Replication.

(Ought not to be precluded) because he saith, That the aforesaid C, at the Time of executing the Writing aforesaid, was of his own Right at large, and that Writing of his own mere and Free Will to the same A, then and there made, and not for fear of Threats, so as the aforesaid C above in Pleading hath alleged. And prays this may be enquired of by the Country, &c.

On an Assault in his own Defence. King's Bench.

And now, *Ec.* defends the Force and Injury, *Ec.* And as to come by Force and Arms, or any thing which is against the Peace of the said now Lord the King, he saith, That he is not thereof guilty; and of this puts himself upon the Country, and the aforesaid *A* likewise. And as to the Residue of the Trespas aforesaid, above supposed to be done, the same *C* saith, That the aforesaid *A* ought not to have, or maintain his Action aforesaid thereof against him, because he saith, That the aforesaid *A*, the Day and Year aforesaid, in the Declaration of the aforesaid *A* above specified, at *E* aforesaid, in the County aforesaid, by Force and Arms on him *C*, made an Assault, and him *C*, then and there would have beaten, wounded, and evilly treated, unless the same *C*, against the aforesaid *A*, then and there had sooner defended himself. And so the same *C* saith, That the Evil or Damage, if any hath then and there happened to the same *A*, it was of the Assault of the said *A*, and in Defence of him *C*. And this he is ready *Ec.* Wherefore, *Ec.*

And the aforesaid *A* saith, That he (ought *Replication.* not to be precluded, *Ec.* because he saith, That the aforesaid *C*, of, (or in,) his own proper Wrong, and without such Cause by him *C*, above in Pleading alledged, against him *A*, made an Assault, and him *A* hath beat, wounded, and evilly treated, in Manner and Form so as the aforesaid *A* above against him complains.

King's Bench. complains. And he prays that this may be enquired of, &c. Therefore, &c.

Not Guilty by C, as to the whole Trespass and Assault. Not Guilty by the Wife of C, as to the Force and Arms, &c. And on an Assault in his own Defence, by the Wife, as to the whole Residue of the Trespass and Assault.— These Pleas were pleaded to a Declaration brought against C, and *Anne* his Wife, for a Trespass and Assault committed by them on the Wife of *A*.

And the aforesaid C and *Ann*, by *W. N.* their Attorney, come and defend the Force and Injury when, &c. And as to the whole Trespass and Assault by him C, in the Declaration aforesaid above supposed to be done, the same C, saith, That he is not thereof guilty, and of this puts himself upon the Country, and the aforesaid *A* and *Sarah* thereof likewise. And as to come by Force and Arms, or any Thing which is against the Peace of the said Lord the now King, by her *Ann* in the Declaration aforesaid, above supposed to be done, the same C and *Ann*, say, That the same *Ann* is not thereof guilty; and of this puts herself upon the Country, and the aforesaid *A* and *Sarah* thereof likewise. And as to the whole Residue of the Trespass and Assault, by her *Anne* in the Declaration aforesaid, above supposed to be done, the same C and *Ann* say, That the aforesaid *A* and *Sarah*, ought not to have their Action aforesaid on this

this Account against them, because they say, King's Bench
 That the aforesaid *Sarah*, the Day and Year
 in the Declaration aforesaid above-mention-
 ed, at the Parish aforesaid, in the County
 aforesaid, upon her *Ann*, made an Assault,
 and her *Ann*, then and there would bear,
 wound, and evilly treat; by which she, the
 same *Ann*, did then and there defend herself
 against the said *Sarah*, as it was lawful for
 her well to do. And so the same *C* and
Ann say, That if any Damage or Evil hath
 then and there accrued to the same *Sarah*, it
 was of her *Sarah*'s own Insult, and in the De-
 fence of her *Ann*; and this the same *C* and
Ann are ready to make appear. Wherefore
 they pray Judgment, if the aforesaid *A* and
Sarah ought to have, or maintain their Action
 aforesaid against them, &c.

And the aforesaid *A* and *Sarah*, as to the Replication.
 whole Residue of the Trespas and Assault,
 by her *Ann* in the Declaration aforesaid, above
 supposed to be done, say, That they, for
 any thing by the same *C* and *Ann* above in
 that Particular by Pleading before alledged,
 ought not to be precluded from having
 their Action aforesaid thereof against them,
 because they say, That the aforesaid *Ann*, of
 her own proper Wrong, and without such
 Cause, by them *C* and *Ann* above, in that
 Particular by Pleading alledged, made an As-
 sault against her *Sarah*, and her *Sarah* beat,
 wounded, and evilly treated, in Manner and
 Form, as the aforesaid *A* and *Sarah* above
 against the same *C* and *Ann* complain; and
 they pray that this may be enquired of by
 the Country. And the aforesaid *C* and *Ann*
 like-

King's Bench. likewise, &c. Therefore, for trying, as well, &c. Let a Jury come, (*as in others.*)

Not Dampnified, pleaded to a Counter Bond.

And now, &c. Defends the Force and Injury, when, &c. and prays the hearing of the Writing Obligatory aforesaid. And it is read to him, &c. He also prays the hearing of the Condition of the same Writing, and it is read to him in these Words, *The Condition*, &c. which being read and heard, the same C saith, That the aforesaid A never was Dampnified by occasion of the aforesaid Writing Obligatory. And this, &c. Wherefore, &c.

Another. Which being read and heard, the same C saith, That he the same C, at the Time of Executing the Writing Obligatory aforesaid, hath hitherto saved and kept harmless, and indemnified the aforesaid A from all Troubles, Suits, Inconveniences, Damages and Disturbances, on occasion of the Writing Obligatory aforesaid, (or otherwise against such and such Persons, as in the Condition expressed.) And this, &c. Wherefore, &c.

Replication. (Ought not to be precluded,) because he saith, That the aforesaid C, upon — Day — &c. above-mentioned, he did not pay, &c.

Or otherwise shews, how he was Damnified, or that the first Obligee threatned and endeavoured to arrest him, (*the Plaintiff*,) for the Money which the *Plaintiff* paid to him; and so is Dampnified, &c. *as the Case requires.*

That

That he was never Receiver.

And now, &c. the Force and Injury when, &c. and saith, That he never was Receiver of the Money of *A B*, by the Hands of the aforesaid *C D*, to render an Accompt for the same to the same *A B*, when he should be thereto required, in Form which the same *A B* above-against him hath declared; and of this puts himself upon the Country, and the aforesaid *A B* likewise. Therefore, &c.

Was never Executor.

And now, &c. Because he saith, That he the same *C* never was Executor of the last Will of the aforesaid *I S*, lately deceased, nor ever administred any Goods or Chattels of him *I*, as Executor of the same *I*; and this he is ready, &c. Wherefore, &c.

(Ought not to be precluded,) &c. because *Replication.* that he saith, That the aforesaid *C* administred divers Goods and Chattels, which were the said *I S* at the Time of his Death, after the Death of him *I*, as Executor of the Testament of the same *I*, at *R* in the County aforesaid; and prays that this may be enquired of by the Country, and the aforesaid *C* likewise, &c. Wherefore, &c.

Was never Administrator.

Because he saith, That Administration of the Goods and Chattels aforesaid, which were the aforesaid *I*, at the Time of his Death,
to

King's Bench. to the same C, by the aforesaid Archbishop of Canterbury, was never granted; and this, &c. Wherefore, &c.

Replication. (Ought not to be precluded,) &c. because he saith, That Administration of all and singular the Goods and Chattels, which were the said I S, at the Time of his Death, by the aforesaid Archbishop of Canterbury at S, was granted to the aforesaid C, so as he hath above supposed, by his Declaration aforesaid. And prays, &c.

Riens by Discent, pleaded by an Heir.

And now, &c. defends the Force and Injury, when, &c. and saith, That he ought not to be charged with the Debt aforesaid, as Son and Heir of the aforesaid I S, Gent. his Father; because by protesting that the Writing aforesaid, is not the Deed of the aforesaid I, for Plea saith, That he hath not any Lands or Tenements by Discent of Heir, of the aforesaid I S, his aforesaid Father, in Fee-Simple, nor had on the Day of exhibiting the Bill aforesaid, nor ever afterwards; and this he is ready to make appear. Wherefore prays Judgment, if, as Son and Heir of the aforesaid I S, his Father, by Virtue of the Writing aforesaid, he ought to be charged with the Debt aforesaid. &c.

Because he saith, That on the Day of exhibiting the Bill of him A aforesaid, to wit, (*such a Day and Year,*) the aforesaid C had Lands and Tenements sufficient by Hereditary Discent, of the aforesaid I his Father, in Fee-Simple, wherewith he might have satisfied the

the same *A*, to wit, at *R*, in the County of King's Bench.
L; and prays that this may be inquired into
 by the Country, and the aforesaid *C* likewise.
 Therefore let a Jury come before the Lord
 the King at *Westminster*, on — next af-
 ter — And who neither, &c. to take Know-
 ledge, &c. because as well, &c. the same Day is
 given to the Parties aforesaid there, &c.

It is Enacted by the Statute of the 4 and 5 *Several Mat-*
Ann. cap. 16. that any Defendant, or Tenant *ters may be*
 in any Action or Suit, or any Plaintiff in *pleaded.*
 Replevin, in any Court of Record, may with
 Leave of the same Court, plead as many fe-
 veral Matters thereto, as he shall think ne-
 cessary for his Defence.

Provided nevertheless, that if any such *Costs for In-*
 Matter shall, on a Demurrer joined, be *sufficiency, on a*
 judged insufficient, Costs shall be given at the *Demurrer.*
 Discretion of the Court: Or, if a Verdict
 be found upon any Issue in the said Cause for
 the Plaintiff, or Defendant, Costs shall also
 be given in like manner, unless the Judge
 who tried the said Issue, shall certify that
 the said Defendant, or Tenant, or Plaintiff
 in Replevin, had a probable Cause to plead
 such Matter, which upon the Issue shall be
 found against him.

The Replication is the Plaintiff's Answer *Replication.*
 to the Defendant's Plea, and great Care must
 be taken least the Replication differ, or vary *Must not differ*
 from the Count, and that it also maintain *from the Count.*
 the Cause of the Plaintiff's Action; for if it
 appear by the Replication, that the Plaintiff
 had no Cause of Action, there he shall not
 T have

King's Bench. have Judgment, although the Defendant's Plea, or Bar, be insufficient in Matter.

And if it differs, or varies from the Count, and makes not good the same, it is called a Departure in Pleading, which is not sufferable.

Also when the Replication doth neither confess and avoid, nor traverse the Matter of the Bar, it is Naught, and the Defendant may Demur to it, and shew this for Cause.

Rejoinder.

The next which follows the Replication, is a Rejoinder, and is where the Defendant makes Answer to the Plaintiff's Replication; and it ought to be a sufficient Answer, and must enforce the Plea, or Bar.

Surrejoinder.

And the next follows a Surrejoinder, or a second Defence of the Plaintiff's Action, opposite to the Defendant's Rejoinder.

And every one of these must be a sufficient Answer to the Matter objected by the adverse Party, and follow and enforce the Matter offered by him, that did plead before.

And as the Replication must not differ from the Count, so neither must the Rejoinder from the Bar.

Rebutter and Surrebutter.

Sometimes, (though very rarely,) the Parties go so far in Pleading, that it comes to a Rebutter, and Surrebutter, before any Issue or Demurrer, and thereto a Demurrer, and Joinder in Demurrer.

Note, Where the Defendant pleads a Sham Plea in Bar, and afterwards Demurs to the Plaintiff's Replication: If there are any material Mistakes in the Declaration, the Plaintiff will fail in his Action, the Fault appearing first on his Side.

It

It is the same where the Plaintiff Demurs ^{King's Bench:} to a bad Plea of the Defendant ; for though the Plaintiff's Plea is ill, yet if the Declaration be faulty, the Plaintiff must likewise fail in his Action.

Where the Declaration is good, and there is a Default in the Defendant's Plea, though the Plaintiff has joined Issue upon it, which is found against him, yet the Plaintiff shall have Judgment upon his good Declaration.

After a Tryal and Verdict, the Postea must be continued on the Roll after this Manner.

In C A S E.

Afterwards continued thereof the Process ^{Postea continued.} between the Parties aforesaid, of the Plea aforesaid, by the Jury thereof, put between them, in respect before the Lord the King at *Westminster*, until *Wednesday* next after three Weeks of Saint *Michael*, from thence next following ; unless the Justices of the said Lord the King, assigned to hold the Assizes in the County aforesaid before, on *Monday* the fifth Day of *August*, at the City of — in the County aforesaid, by Form of the Statute came for Defect of Jurors, &c. At which Day, before the Lord the King at *Westminster*, came the aforesaid *A* by his Attorney aforesaid. And the aforesaid Justices of the Lord the King, at the Assizes before whom, &c. sent here his Record before him had in these Words, to wit, afterwards on

T 2

the

King's Bench. the Day and Place under contained, &c. (as
The Judgment on the Postea to the End.) Therefore it is con-
 sidered, that the aforesaid *A* should recover
 in Case, against Defendant.

against the aforesaid *C*, his Damages afore-
 said, to One hundred Pounds, by the Jury
 aforesaid, in Form aforesaid assessed. And
 also Five Pounds to the same *A*, at his Re-
 quest, for his Costs and Charges aforesaid, by
 the Court here, Increase adjudged, which
 said Damages amount in the whole to 105 *l*.

Mercy. And the aforesaid *A* in Mercy, &c.

Judgment in Debt, against Defendant.

It is therefore considered, that the afore-
 said *A* should recover against the aforesaid *C*,
 his Debt aforesaid, and the Damages afore-
 said, by the Jury aforesaid, in Form afore-
 said Assessed. And also 4 *l*. for his Costs
 and Charges aforesaid, to the same *A*, by the
 Court of the said Lord the now King here,
 by his Assent of Increase adjudged; which
 said Damages amount in the whole to Fifty
 Pounds. And let the aforesaid *C* be ta-
 ken, &c.

*If Satisfaction be hereupon acknowledged,
 you Enter thus.*

Afterwards, to wit, on *Wednesday* next,
 after — in the sixth Year of the Reign of
 the Lord *George*, now King of *Great Britain*,
 before the Lord the King at *Westminster*,
 came the aforesaid *A*, by *I S* his Attorney,
 by the Court of the said Lord the King now
 here, especially appointed, and confessed him-
 self,

self, (or acknowledged himself,) to be satisfied King's Bench. by the aforesaid C, of the Debt and Damages aforesaid. Therefore let the same C of the Debt and Damages aforesaid, be thereof discharged, &c.

*If Judgment be against the Plaintiff,
then thus,*

Judgment against the Plaintiff.

It is therefore considered, that the aforesaid H shall take nothing by his Bill, against the aforesaid C; but that he and his Pledges of prosecuting, to wit, J. Doe, and Rich. Roe, may be in Mercy, &c. And the aforesaid C may go thereof without a Day, &c. And it is farther considered, that the aforesaid C, should recover against the aforesaid A, 6 l. 10 s. for his Costs and Charges, by him about his Defence in this Particular sustained, to the same C, adjudged by the Court of the said Lord the King, now here on his Assent, according to the Form of the Statute in the like Case made and provided. And the aforesaid C may have thereof Execution, &c.

See before amongst the *Postea's*.

Note, That on Paper Books and Demurrers, the Plaintiff must deliver the Book with a Rule on the Side; that the Defendant's Attorney must return it at the Day, or else Judgment. That after returned, it must be Engrossed on a Roll, carried into Court, and Council move to make it a Record; then the Rule drawn up, and Cause set down for a

King's Bench. *Concilium* ; then Books made for the Judges, 2 s. to each of their Clerks ; then to be argued by Council, &c. See after Issues and Demurrers, and amongst the special Notes, Title, *Demurrers*.

Of DEMURRERS.

A General Demurrer to a Declaration.

AND now at this Day, to wit, on *Wednesday* next, after three Weeks of *St. Michael*, that same Term, until which Day the aforesaid C had Leave of Imparling to the Bill aforesaid, and then to answer, &c. before the Lord the King at *Westminster*, came as well the aforesaid A, by his Attorney aforesaid, as the aforesaid C, by I S, his Attorney ; and the same C defends the Force and Injury, when, &c. And prays Judgment of the Declaration aforesaid, because he saith, That the Declaration aforesaid, and the Matter in the same contained, be not sufficient in the Law, to have the Action of him A, against him C, to be maintained, to which the same C hath no Necessity, nor is bound by the Law of the Land in any manner to answer ; and this he is ready to aver. Wherefore for want of a sufficient Declaration in this Particular, the same C prays Judgment of that Declaration, and that that Declaration may be stayed, &c.

The

The Plaintiff joins in Demurrer.

And the aforefaid *A* faith, That for any thing before alledged, the Declaration of him *A* aforefaid, ought not to be stayed, becaufe he faith, That the Declaration aforefaid, and the Matter in the fame contained, are good and fufficient in the Law, to maintain the aforefaid Action of him *A*, and againft him *C*; which faid Declaration, and the Matter in the fame contained, the fame *A* is ready to juftify, and prove, as far as the Court, &c. And becaufe the aforefaid *C* hath not answered to that Declaration, nor the fame hitherto hath any ways denied, the fame *A* prays Judgment, and his Damages, by occafion of the Premiffes, to be adjudged to him, &c.

Or thus, in Debt.

— Prays Judgment, and his Debt aforefaid, together with his Damages, occafioned by the detaining the faid Debt, to be adjudged to him.

In Trespass.

— Prays Judgment, and his Damages, occafioned by the Trespass aforefaid, to be adjudged to him.

In Assault.

— Prays Judgment, and his Damages, occafioned by the Trespass and Assault aforefaid, to be adjudged to him.

Demurrer to a Plea in Bar, by the Plaintiff.

And the aforefaid *A* fays, That he, by any Thing by the aforefaid *C*, in Manner and Form aforefaid, above by Pleading alledged, ought not to be precluded from having his Action aforefaid thereof, againft him the faid *C*, becaufe he fays,

King's Bench. That the Plea aforesaid, contains not in itself sufficient Matter in the Law, to preclude the aforesaid *A* from having his Action aforesaid thereof against him the said *C*; to which said Plea, the aforesaid *A* is not necessitated, nor by the Law of the Land in any wise bound to answer; and this he is ready to verify. Wherefore in Default of a sufficient Plea in this Behalf, the same *A* prays Judgment, and his Damages, occasioned by the Premises to be adjudged to him.

In Trespass.

— Prays Judgment, and his Damages, by occasion of the Trespass aforesaid, to be adjudged to him.

Assault. — By occasion of the Trespass and Assault aforesaid, &c.

In Debt.

— Prays Judgment, and his Debt aforesaid, together with his Damages, by occasion of the detaining of that Debt, to be adjudged to him, &c.

In Covenant.

— On occasion of the Breach of the Covenants, aforesaid.

Defendant joins in Demurrer.

And the aforesaid *C* saith, That the Plea aforesaid, by him *C* in Manner and Form aforesaid, above pleaded, and the Matter in the same contained, are good and sufficient in the Law, to have precluded him *A*, from his Action aforesaid, thereof against him *C*; which said Plea, and the Matter in the same contained, he, the same *C*, is ready to aver and prove, as far as the Court, &c. And because the aforesaid *A* hath not answered to that Plea, nor the same hitherto hath any way denied,

nied, the same *C* as before prays Judgment; and King's Bench.
that the aforesaid *A* may be precluded from having
his Action aforesaid, against him, the said *C*.
Thereupon, &c.

*Demurrer by the Defendant, to the Plaintiff's
Replication.*

And the aforesaid *D* saith, That the Plea aforesaid, by him *G* in Manner and Form aforesaid, above in his Replication pleaded, and the Matter in the same contained, are no ways sufficient in Law, for him *G*, to have or maintain his Action aforesaid thereupon, against him *D*, to which the same *D* hath no Necessity, nor by the Law of the Land is obliged in any manner to answer; and this he is ready to aver. Wherefore for Default of a sufficient Replication in this Particular, the same *D* as before prays Judgment; and that the aforesaid *G* may be precluded from having his Action aforesaid, against him *D*, thereupon.

Plaintiff Rejoins.

And the aforesaid *G* saith, That the Plea aforesaid, by him *G* in Manner and Form aforesaid, above in his Replication pleaded, and the Matter in the same contained, are good and sufficient in Law, for him *G*, to have and maintain the Action of him *G* aforesaid thereupon, against him *D*; which said Plea, and the Matter in the same contained, the same *G* is ready to aver, and prove so far as the Court here shall award, &c. And because the aforesaid *D*, hath not answered to that Plea, nor the same hitherto in any Manner hath denied, the same *G* as before demands Judgment, and his Debt aforesaid, together with the Damages, on occasion of detaining that Debt, to be adjudged to him, &c.

Demurrer

King's Bench.

Demurrer to a Rejoinder, by the Plaintiff.

And the aforesaid *J B* saith, That the Plea aforesaid, by the aforesaid *R F*, in Manner and Form aforesaid, above in his Rejoinder pleaded, and the Matter in the same contained, are no ways sufficient in Law, &c. *as it is in the Demurrer to the Defendant's Plea, changing the Word Plea for Rejoinder, and concludes like it.*

Also the Defendant's Joinder to this, is as his Joinder to a Demurrer upon his Plea, changing *Pleading* to *Rejoining*, and concludes like it.

And if the Demurrer be by the Defendant to the Plaintiff's Surrejoinder, it is like his Demurrer to the Plaintiff's Replication, using the Words *Surrejoinder*, instead of *Replication*, &c. And you are to observe, that when you enter a Demurrer upon the Roll, you enter it as other Rols, to the End of the Joinder in Demurrer, and then immediately follows the Continuance.

Demurrer continued.

But because the Court of the said Lord the King now here is not advised, of giving their Judgment of, and upon the Premises, a Day is thereon given to the Parties aforesaid, before the Lord the King at *Westminster*, until (*such a Day, next after such a Return*), for hearing of their Judgment of, and upon the Premises, for that the Court of the Lord the King now here, is not yet advised of giving Judgment thereupon, &c.

And if it be continued to a further Day, you add,

Farther Continuance.

At which Day, before the Lord the King at *Westminster*, came the Parties aforesaid, by their Attornies aforesaid: And because the Court of the said Lord the King here, is not as yet advised of giving their Judgment of,

and

and upon the Premises, a Day thereon is King's Bench.
further given to the Parties aforesaid, before
the Lord the King, &c. (as before.)

And if the Judgment be then given, you say,

At which Day, before the Lord the King *Judgment for*
at Westminster, came the Parties aforesaid, by *the Plaintiff, on*
their Attornies aforesaid; upon which the *Demurrer to*
Record and Matters aforesaid being seen, *his Declara-*
tion.

and, by the Court of the said Lord the King,
now here, fully understood, and all and singular
the Premises being examined, and mature
Deliberation being had thereupon. * For
that it seemed to the Court of the Lord the
now King here, that the Declaration afore-
said of him A, and the Matter in the same
contained, are good and sufficient in Law, for
him A, to have and maintain his Action afore-
said, against him C. Therefore it is consi-
dered, that the aforesaid A, should recover
against the aforesaid C, his Debt aforesaid,
and also 6 l. for his Damages, which he hath
sustained, as well on occasion of detaining
that Debt, as for his Costs and Charges by
him, about his Suit in this Particular appoint-
ed to the same C, by the Court of the said
Lord the King, here now, on his Assent ad-
judged. And the aforesaid C in Mercy, &c.

The Entry is much the like, if it be for
the Plaintiff upon his Replication, or Surre-
joinder in Debt, only changing the Word
Declaration to Replication, &c.

* And if it be given against the Defendant,
upon the Plaintiff's Demurrer to his Plea in
Debt, 'tis much the like, *as for that it seems,*

or

King's Bench. or for that because it seemed to the Court of the Lord the now King here, that the Declaration aforesaid, by the aforesaid *T*, in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are no ways sufficient in Law to have precluded the aforesaid *A* from having his Action aforesaid thereon, against the aforesaid *C*. Therefore it is considered, &c.

Mercy.

The like upon his insufficient Rejoinder. But where Judgment is thus given on the Behalf of the Plaintiff, in Case where a Writ of Inquiry of Damages is awarded, then after the Words, *To have or maintain, or to have precluded from having, you say,*

Writ of Enquiry.

It is considered that the aforesaid *A*, ought to recover his Damages against the aforesaid *C*, on occasion of the Premises: But because it is unknown to the Court of the said Lord the King now here, what Damages the said *A* hath sustained, by occasion of the Premises, therefore it is commanded to the Sheriff of *L*, that by the Oath of twelve honest and lawful Men of his Bailiwick, he diligently enquire what Damages the aforesaid *A* hath sustained, as well by occasion of the Premises aforesaid, as for his Costs and Charges, by him about his Suit in this Particular expended. And that the Inquisition which he shall take thereupon, he send to the Court of the Lord the now King, before the King himself at *Westminster*, on *Tuesday* next after three Weeks of *Holy Trinity*, under his Seal, and the Seals of those by the Oath of whom that Inquisition shall be taken, together with the Writ of the Lord the King, to him thereof directed, the

the same Day is given to the aforesaid C King's Bench. there, &c.

At which Day, before the Lord the now King at *Westminster*, came the aforesaid A, by his Attorney aforesaid, and the aforesaid Sheriff of L, to wit, R K Knight, by Virtue *Return of the Writ.* of the Writ of the said Lord the King, to him thereof directed, hath returned a certain Inquisition before him, taken at (such a House,) situate in the Parish of Saint L. That the aforesaid A, hath sustained Damages by occasion of the Premisses aforesaid, besides his Costs and Charges, by him about his Suit in this Particular expended, to One Hundred forty seven Pounds six Shillings and six Pence ; and for his Costs and Charges, to Twenty and seven Shillings and four Pence. Therefore it is considered, that the aforesaid A shall recover against the aforesaid B, his Damages aforesaid, assessed by the Jury aforesaid, in the Form aforesaid ; and also Eleven *Final Judgment.* Pounds six Shillings and two Pence, for his Costs and Charges aforesaid, to the same A adjudged, by the Court of the said Lord the now King, by his Assent of Increase ; which said Damages do, in the Whole, amount to One Hundred and sixty Pounds, &c. And the aforesaid C in Mercy, &c.

If

King's Bench. *If the Judgment upon Demurrer, go for the Defendant against the Plaintiff upon the Declaration, the Entry is as before, unto*

Judgment against the Plaintiff.

— For that it seems, (or because it seems,) to the Court of the Lord the now King here, that the Declaration aforesaid, and the Matter in the same contained, are no ways sufficient in Law, to have and maintain the Action of the aforesaid *A*, against the aforesaid *C*. It is therefore considered, that the aforesaid *A* shall take nothing by his Bill aforesaid; but for his false Complaint thereof, shall be in Mercy: And the aforesaid *C* may go thereon, without a Day, &c.

Another upon Plea.

— For that it seems to the Court of the said Lord the now King here, that the Plea aforesaid, by him *C* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are good and sufficient in Law, to have precluded the aforesaid *A*, from having his Action aforesaid against him *C*. It is therefore considered, that the aforesaid *A* shall take nothing by his Bill aforesaid; but for his false Complaint thereof shall be in Mercy. And the aforesaid *C* may go thereon without a Day, &c.

Another.

Another.

It is therefore considered, that the afore-King's Bench. said *A* shall take nothing by his Bill; and that he and his Pledges of prosecuting, to wit, *J. Doe*, and *R. Roe*, shall be in Mercy for his false Complaint: And the aforesaid *C* may go thereon without a Day, &c.

If you shew Causes of Demurrer, then you may say as before, to answer, and then add,

— And for Causes of Demurrer in the Law, upon the Declaration aforesaid, the same *C*, according to the Form of the Statute in the like Case lately made and provided, shews, and to the Court here demonstrates these Causes under following, to wit,

* That it doth not appear by the Declaration aforesaid, that there is any Memorandum, * Such Causes as the Case requires. (it is to be remembred, or Promise in the Declaration aforesaid specified,) in Writing signed by him *A*, or any other Person by him lawfully authorized, as he ought, according to the Form of the Statute in the like Case made and provided; and that the Declaration aforesaid is uncertain, insufficient, and wants Form, &c.

Or you may put the Causes at last, after the Word *Precluded*.

Note, You may amend your Declaration, before Joinder in Demurrer, upon Payment of Costs.

By

King's Bench.

By the Statute for *Amendment of the Law*, Stat. 4 and 5 it is Enacted, That where any Demurrer shall be joined, and entred in any Action, or any Suit, in any Court of Record, the Judges shall proceed and give Judgment, according as the very Right of the Cause, and Matter in Law shall appear unto them, without regarding any Imperfection, Omission, or Defect in any Writ, Return, Plaint, Declaration, or other Pleading, Process, or Course of Proceeding whatsoever; except those only which the Party demurring, shall specially and particularly set down and express, together with his Demurrer, as Cause of the same. Notwithstanding that such Imperfection, Omission, or Defect, might heretofore be taken to be Matter of Substance, and not aided by the Statute, 27 *Eliz. cap. 5.* (entituled, *An Act for the Furtherance of Justice, in Case of Demurrer and Pleadings*;) so as sufficient Matter appear in the said Pleadings, upon which the Court may give Judgment, according to the very Right of the Cause. And therefore no Advantage or Exception shall be taken of, or for an immaterial Traverse, or of, or for the Default of entring Pledges upon any Bill or Declaration; or for the Default of alledging the bringing into Court any Bond, Bill, Indenture, or other Deed whatsoever, mentioned in the Declaration, or other Pleading; or of, or for the alledging the bringing into Court, *Letters Testamentary, or Letters of Administration*; or of, or for the Omission of, *by Force and Arms, and against the Peace*, or either of them; or of, or for the want of *Averment of, this he is ready*

ready to aver by the Record; or of, or for not ^{King's Bench.} alledging, so as appears by the Record. But the Court shall give Judgment according to the very Right of the Cause as aforesaid, without regarding any such Imperfections, Omissions, and Defects, or any other Matter of the like Nature, except the same shall be specially and particularly set down, and shewn for Cause of Demurrer.

And Note, That though the want of Form is not sufficient upon a general Demurrer, yet it being made a Cause of Demurrer, may prevail; for the Judge is to have no Regard to want of Form, but only to such Causes as the Party demurring shall set down.

And if there be want of Substance, a General Demurrer will suffice, without shewing Causes. But *Quere*.

Of Issues and Demurrers.

When there are two or more Issues upon a Pleading, then after the Tender of the last Issue; and of this puts himself upon the Country, and the aforesaid A likewise, &c. You add, And as to the trying, as well that Issue, as the aforesaid other Issues, between the Parties aforesaid likewise joined, let a Jury come before the Lord the King at *Westminster*, on *Wednesday* next after — And who neither, &c. to take Knowledge, &c. because as well, &c. the same Day is given to the Parties aforesaid there, &c.

Where there is a Demurrer to one Part of the Declaration, and an Issue to the other

U

Parts,

King's Bench. Parts, the Trial may either be before, or after the arguing of the Demurrer, at the Election of the Plaintiff.

But if Judgment be given for the Plaintiff on the Demurrer, he may enter a *Non Pros* as to the Issue, and proceed to a Writ of *Inquiry* on the Demurrer; but without a *Non Pros* he cannot have a Writ of Enquiry, because on the Trial of the Issue, the same Jury will ascertain the Damages for that Part to which the Demurrer was.

And the Jury must, if they find the Issue for the Plaintiff, give Damages upon the Issue, and Damages upon the Enquiry severally: But if they find the Issue for the Defendant, then they must assess Damages upon the *Enquiry*; and if the Court gives Judgment for the Plaintiff, upon the *Demurrer*, he shall have his Costs and Damages.

But if the Issue be tried first, then the *Distringas Juratorum* must be *as well* to try the Issue joined between the Parties, as to enquire of the Damages, if Judgment shall be given for the Plaintiff, &c.

Demurrer and Issue.

And as for the trying that Issue from whence the Parties aforesaid have put themselves upon the Jury of the Country, as to enquire what Damages the aforesaid *A* hath sustained, by occasion of the Premises, whereof the Parties aforesaid have put themselves upon the Judgment of the Court, If Judgment happen to be given thereof, for the aforesaid *A*, against the aforesaid *C*, let a Jury come before, &c. as in others, unto there, &c.

After-

Afterwards Proceſs continued, (&c. *as in* King's Bench. *others, to the End of the Verdict,*) 200 *l.* Damages; and for thoſe Coſts and Charges, to 40 *s.* Then add, And as to the inquiring what Damages the aforeſaid *A* hath ſuſtained, by occaſion of the Premiſſes underwritten, whereof the Parties aforeſaid have put themſelves upon the Judgment of the Court, if Judgment happens to be thereof given for the aforeſaid *A*, againſt the aforeſaid *C*, then the ſame Jurors ſay upon their Oath, That the aforeſaid *A* hath ſuſtained Damages by occaſion thereof, to 100 *l.* It is therefore conſidered, that the aforeſaid *A* ſhall recover, againſt the aforeſaid *C*, the Damages aforeſaid, by the Jury aforeſaid, in Form aforeſaid aſſeſſed; and alſo 11 *l.* 6 *s.* 8 *d.* for the Coſts and Charges aforeſaid to the ſame *A*, by the Court of the ſaid Lord the now King here, by his Aſſent of Increate adjudged: Which ſaid Damages amount in the Whole, to 313 *l.* 6 *s.* 8 *d.* And the aforeſaid *C* in Mercy, &c.

Issue and Demurrer.

Not Guilty as to the Wounding, and juſtifies as Church-Wardens to the reſt of the Aſſault.

Plaintiff Demurrs to the Juſtification.

Defendant joins in Demurrer.

Here thereof, as yet, &c. And as to the trying the Issue, &c. as to the inquiring what Damages, &c. there, &c. at which Day, &c. And because the Court, &c. is not as yet advised, a Day thereupon is further, &c. at which Day, &c. And upon this having seen, &c. that the Plea was sufficient, It is therefore considered that the aforesaid A shall take nothing by the Bill, and that he and his Pledges of prosecuting, to wit J. Doe, and R. Roe, shall thereupon be in Mercy for his false Complaint: And the aforesaid C may upon this Account go without a Day, &c.

*Respondeas,
Ouster and
Plea.*

After a Demurrer to a Plea in Abatement, the Judgment on a *Respondeas Ouster*, some ignorantly enter up the second Plea, taking no Notice of the Demurrer, or the Judgment thereon, which is a Mistrial and void. The *Respondeas Ouster*, and the *Plea*, ought to be entred upon the *Demurrer Roll*; and the Record for Trial is to be taken off the *Roll*.

The Form is thus.

After the Demurrer is continued to the Day of the Judgment given, then say,

At which Day came as well the aforesaid Plaintiff, by his Attorney aforesaid, as the aforesaid Defendant in his proper Person: And upon this having read and heard the Plea aforesaid, by the aforesaid Defendant above pleaded, it seems to the Court of the said Lord the King here, that the same Plea
is

is insufficient for the Court of the Lord the King's Bench.

King now here, to quash the Bill aforesaid : And that the aforesaid Defendant to the Bill of the aforesaid Plaintiff, may answer, &c. Upon which the same Defendant, by *AB* his Attorney, saith, That he hath not assumed upon himself in Manner and Form, so as the aforesaid Plaintiff above against him hath declared ; and of this puts himself upon the Country. And the aforesaid Plaintiff likewise, &c. Therefore let a Jury come thereupon before the Lord the King, (*as in others.*)

If the Plea be pleaded in proper Person, but if by an Attorney, then name the Attorney ; and afterwards leave out the Attorney's Name, and say only *by his Attorney aforesaid, saith, &c.*

In order to make up the Paper Book on a Demurrer, you deliver a Copy of the Declaration to the Clerk of the Papers, who makes up the Paper Book, and gives a four Days Rule in the Margent thereof, *for the Defendant to rejoin, otherwise Judgment.* If the Defendant returns the Book in time, and pays you 8 *d. per Sheet* for his Pleadings, you enter your Proceedings with Mr. *Lantrow* ; move for a *Concilium* ; draw up, and serve the Rule ; enter your Cause with the Clerk of the Papers ; deliver your Paper Books to the Judges, and argue the Demurrer ; and if Judgment goes for the Plaintiff, draw up your Rule for Judgment ; serve the same, and give Notice of executing a Writ of Enquiry : But if it is in Debt, you give no Notice of executing a Writ of Enquiry, but take out your Execution.

King's Bench. If there is an *Issue* as to Part, and *Demurrer*, as to the other Part, you give Notice of Trial, and proceed to try your Cause, and argue your *Demurrer* too if needful, in Manner as is before directed.

But if the Plaintiff refuses to join in *Demurrer*, you may have a Rule from the Master of the Office, which is entred with the Clerk of the Rules; and if he does not join in *Demurrer* before the Rule is out, you may sign a *Non Prof.*

Note, On Delivery of the Paper-Book of *Demurrer* to the Defendant's Attorney, you cannot give Notice of executing a Writ of *Enquiry*; but you must stay till after you have obtained Judgment.

Note also, The Defendant's Attorney may, at the Expiration of the Time for returning the Paper-Book, wave his *Demurrer*, and give the General Issue; and Notice of Trial must be given but from the Time of pleading the General Issue.

Of Writs of ERROR.

The Manner of entring a Writ of Error of Record out of the Common Pleas, returnable in the King's Bench.

Error in B.C.
returnable in
B. R.

THE Lord the King hath given in Charge to his beloved and faithful Robert Eyre Knight, his Chief Justice of the Bench, his Writ closed in these Words, to wit; George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defen-

Defender of the Faith, &c. and so enter the King's Bench,
Writ of Error and Return, and the whole
Record annexed, to *Mercy, &c.*

Common ERROR assign'd.

Afterwards, to wit, on *Saturday* next, after the Octaves of *Saint Hillary*, that same Term, before the Lord the King at *Westminster*, came the aforesaid *C D*, by *J G*, his Attorney, and saith, That in the Record and Process aforesaid, and also in the giving of the Judgment in the *Plaint* aforesaid, there is manifest Error (or it is manifestly erred, or mistaken) in this, to wit, that by the Record aforesaid it appears, that the Judgment aforesaid, in Form aforesaid, was given for the aforesaid *A B*, against the aforesaid *C D*, when, by the Law of the Land, that Judgment ought to be given for the aforesaid *C D*, against the aforesaid *A B*, therefore, in that it is manifestly erred. And the aforesaid *C D* prays the Writ of the said Lord the King, to provide for the aforesaid *A B*, being before the said Lord the King, to hear the Record and Process aforesaid, and it is granted to him, &c. by which it is commanded to the Sheriff aforesaid, that by honest, &c. he cause the aforesaid *A B* to know, that he may be before the Lord the King, in fifteen Days from the Day of *Easter*, wheresoever, &c. to hear the Record and Process aforesaid, if, &c. and further, &c. the same Day is given to the aforesaid *C D*, &c. at which Day, before the Lord the King, at *Westminster*, came the aforesaid *C D*, by his Attorney aforesaid, and the

U₄ Sheriff

King's Bench. Sheriff hath not thereof sent the Writ. And the aforesaid *A B* being solemnly required to come at the same Day, likewise came by *WT*, his Attorney, upon which the same *C*, as at first, saith, That in the Record and Process aforesaid, and also in the rendering of the Judgment aforesaid, it is manifestly erred, alledging the Errors aforesaid by him in Form aforesaid alledged, and prays, that the Judgment aforesaid for those Errors, and others, being in the Record and Process aforesaid, may be reversed, annulled, and entirely for nothing esteemed; and that he may be restored to all things, which he lost by Occasion of the Judgment aforesaid; and that the Court of the said Lord the King here, may proceed as well to the Examination of the Record and Proceedings aforesaid, as of the Matters aforesaid above assigned for Errors; and that the aforesaid *A B* may rejoin to the Errors, &c. upon which the same *A B* saith, that neither in the Record and Process aforesaid, nor in the rendering of the Judgment aforesaid, it is in any thing erred, and prays, that the Court of the Lord the King here, may proceed as well to the Examination of the Record and Proceedings aforesaid, as of the Matters aforesaid above assigned for Errors, and that the Judgment aforesaid may be affirmed in all things. But because the Court of the said Lord the King now here, is not as yet advised of rendering their Judgment of and upon the Premises, a Day is thereof given to the Parties aforesaid before the Lord the King at *Westminster*, until in the Morrow of the holy *Trinity* (and so it is continued untill

Hillary)

Plaintiff re-
joins.

Continuance.

Hillary) at which Day, before the Lord the King's Bench. King at *Westminster*, came the Parties aforesaid, by their Attornies aforesaid; upon which having seen, and by the Court of the Lord the King now here, fully understood all and singular the Premisses, and diligently examined and viewed as well the Record and Proceedings aforesaid, and the Judgment given upon the same, as the Causes and Matters by the aforesaid C above assigned for Error, for that it appears to the Court of the Lord the King now here, that neither in the Record and Process aforesaid, nor in the rendering of the Judgment aforesaid, there is any Thing vicious or defective, and that that Record was in nothing erred, it is considered, that the Judgment aforesaid shall be affirmed *Judgment affirmed.* in all Things, and stand in all Force and Effect, notwithstanding the said Causes and Matters above assigned for Error. And further, it is considered by the Court of the Lord the King now here, that the aforesaid *A B* shall recover against the aforesaid *C D* twelve Pounds, adjudged to the same *A B* by the Court of the Lord the King now here, according to the Form of the Statute in the like Case lately made and provided, for his Costs, *Costs.* Charges, and Damages which he hath sustained by Occasion of the Delay of Execution of the Judgment aforesaid, by Pretence of the Prosecution of the Writ of Error aforesaid, and that the aforesaid *A B* may have thereof Execution, &c.

Judgment

King's Bench.

Judgment Reversed.

For that it appears to the Court of the Lord the King now here, that in the Record and Proceedings aforesaid, and also in obtaining the Judgment aforesaid, it is manifestly erred, it is considered that the Judgment aforesaid for that Error, and others in the Record and Proceedings aforesaid, shall be reversed, annulled, and clearly had for nothing; and that the aforesaid *J* may be restored to all Things which he hath lost by Occasion of the Judgment, &c.

*Error in B. R.
returnable in
the Exchequer
Chamber.*

A Writ of Error, in the King's Bench, returnable in the Exchequer Chamber, must be allowed by the Clerk of the Errors, and a Copy of such Allowance must be served on the Defendant's Attorney in *Error*. If the Writ is returnable the first Return in Term, (there being but Two Returns in each Term for that Purpose) the Clerk of the Errors will give you a Rule to transcribe in Eight Days, a Copy of which you must serve on the Attorney, for the Plaintiff in *Error*, and he must transcribe the same Term, alledge Diminution the Term following, and assign Errors the Term next after, and the Term after that argue the *Errors*. But if the Defendant in *Error* sleeps, and does not give a Rule to transcribe upon the Return of the Writ of *Error*, and a Term or two, or any Time after, gives a Rule to transcribe, the Plaintiff in *Error* must transcribe, and alledge Diminution the same Term, assign Errors the next, and argue the Term after.

Error

Error that continues before you.

This Writ of Error is allowed in Court by the Clerk of the Rules, who draws up a Rule of such Allowance, and then the Attorney for the Defendant serves the Plaintiff's Attorney with a Copy of the Writ of Error, and Rule, whereby it appears to be allow'd; upon which the Defendant's Attorney in Error draws up a Rule in Form following.

A. against B. in Error.

Unless the Plaintiff in Error assign Errors within four Days after Notice of this Rule to him or his Attorney to be given, let a *Non Prof.* (no Prosecution) be made for the Defendant in Error.

This Rule Mr. *Clerke* the Secondary signs, and then it must be carried to the Clerk of the Rules, who will draw up a Rule from it upon Stamp, for which you pay 2 s. 4 d. and then serve a Copy on the Attorney for the Plaintiff in Error, and if he assigns any Error, you must either apply to it, or *Demur*, as you see Occasion: And in Case of *Demurrer*, you make up a Book as you do other Paper Books, and put the Cause upon Return of the Book in the Paper to be argued, the Errors are to be assigned, and entered upon the Record of the Judgments.

Note, Upon this Writ of Error there is no Bail to be given, in respect Errors may be assigned, and the Book made up the same Term. The Error to be assigned must be Facts, for the

King's Bench. the Judges of the same Court cannot be Judges of any *Error* upon Record, which is supposed to be their own Entry, and upon Issue taken of *Error* in Fact, you may proceed to Trial *per pais*, as in other common Cases.

Error in Parliament.

If you bring a Writ of *Error* in Parliament, to reverse a Judgment in the King's Bench, you must get the Curſitor to procure a Warrant from the King, for which you are to pay 5 *l.* and for Allowance with the Clerk of the *Errors* you likewise pay 4 *l.* and then the Lord Chief Justice carries the Record, and a Transcript thereof, up to the House of Lords; and after they are examined, there he leaves the Transcript with the Lords, but brings the Record back again. Then, if you are for the Defendant in *Error*, you must apply to some Lord, to move, that the Plaintiff in *Error* may assign his Errors; but if you are for the Plaintiff, get him to move, that upon your assigning *Errors*, the Defendant may appear and make his Defence. After hearing of Council on both Sides, and the Lords having either affirmed or reversed the Judgment, the Clerk of the Parliament remands the Transcript of the Record into the King's Bench, with the Affirmation or Reversal thereof to be entered there upon Record.

Usually two on each Side.

In Matters of Weight and Difficulty, the Lords examine the *Errors*, with the Advice and Counsel of the Judges, who inform them what the Law is in such Cases; and if Judgment be reversed, then Commandment is given

given to the Lord Chancellor to do Executi- King's Bench.
on accordingly; but if the Judgment be af-
firmed, the Court of King's Bench is to pro-
ceed to Execution, &c.

Plea to a Scire Facias against the Bail.

AND the aforesaid *AB* and *CD*, by
EF, their Attorney, come and pray
Judgment of the Writ of *Scir. Fac.* aforesaid,
because they say, that after the rendering of
the Judgment aforesaid, against the aforesaid
(*Defendant*) in Form aforesaid had, and be-
fore the issuing of the Writ of *Scire Facias*
aforesaid, against the aforesaid *AB* and *CD*,
no Writ of *Capias ad Satisfaciendum*, of, and
upon that Judgment for the aforesaid (*Plain-*
tiff) against the aforesaid (*Defendant*) was in
due manner prosecuted and returned, which
according to the Custom of that Court, from
the Time whereof the Memory of Man is
not to the contrary, hath been used, and
approved of in the same Court, ought to
have been done before any Writ of *Scire*
Facias against the aforesaid *AB* and *CD*,
ought to have issued; and this they are ready
to aver, wherefore they pray Judgment, and
that the Writ of *Scire Facias* aforesaid may be
stayed.

Replication.

And the aforesaid Plaintiff saith, that he,
for any thing before alledged from his Execu-
tion aforesaid, of the Debt and Damages a-
foresaid, by the said *AB* and *CD* acknow-
ledged, in Form aforesaid, under Pretence of
the Recognizance aforesaid, ought not to be
stayed

King's Bench. stayed from having the Writ of *Scire Facias*, because he saith, that after the rendering of the Judgment aforesaid against the aforesaid (*Defendant*) in Form aforesaid had, and before the issuing of the aforesaid Writ of *Scire Facias*, against the aforesaid *A* and *C*, to wit, (*the Day of the Teste of the Capias*) aforesaid, a certain Writ of *Capias ad Satisfaciendum*, was sued out of the Court of the said Lord the King, before the King himself, at *Westminster*, against the aforesaid *Defendant*, directed to the then Sheriff of *London*, by which said Writ, the said Lord the King commanded the then Sheriffs of *London*, that they should take the aforesaid (*Defendant*) if he should be found in their Bailiwick, and him safely keep, so that they might have his Body before the said Lord the King, (*the Return of the Writ*) to satisfy the aforesaid Plaintiff of 100 *l.* and also 10 *l.* which the aforesaid Plaintiff in the Court of the said Lord the King, before the King himself, at *Westminster*, hath sustained as well by Occasion of detaining that Debt, as for his Costs and Charges by him laid out about his Suit in that behalf, whereof the aforesaid *Defendant* was convicted, so as plainly appears on Record; and that the aforesaid Sheriffs of *London* should have there then that Writ aforesaid, which said Writ of *Capias ad Satisfaciendum*, of and upon that Judgment for the aforesaid Plaintiff, against the aforesaid *Defendant*, was in due Manner prosecuted, and before the Return of the same Writ, was in due Manner delivered to the aforesaid Sheriffs of *London*. Upon which the

the aforesaid Plaintiff, at the aforesaid Re-King's Bench. turn of the same Writ, came in his proper Person; and then the Sheriffs of *London*, to wit, (&c.) at that Day sent their Return, that the aforesaid Defendant was not to be found in their Bailiwick, as by the aforesaid Writ of *Ca. Sa.* and the Return thereof in the same Court of the said Lord the King, before the King himself at *Westminster*, among the File of Writs of *Ca. Sa.* in the aforesaid Court of the said Lord the King, before the King himself at *Westminster*, remaining of Record filed, more fully it is clear, and appears; and this he is ready to averr, wherefore the aforesaid Plaintiff demands Execution for the aforesaid Debt and Damages aforesaid in Form aforesaid acknowledged, by Colour of the Recognizance aforesaid to be adjudged to him, &c.

Another Plea to a Scire Fa. against the Bail.

Whereupon came *A B*, and *C D*, by *E F* their Attorney, and say, that the aforesaid Plaintiff ought not to have his Execution against them for the Debt and Damages aforesaid, because they say, That no such Record of the Recognizance aforesaid is had, as the aforesaid Plaintiff by his Writ above hath supposed; and this they are ready to aver. Wherefore they pray Judgment if the aforesaid Plaintiff ought to have his Execution against them for the Debt and Damages aforesaid, &c.

Repli-

Plea of Scire facias.

Replication.

And the aforesaid Plaintiff saith, that for any thing by the aforesaid *A B*, and *CD* above in Pleading alledged, he ought not to be precluded, or retarded from having his Execution against them, for the Debt and Damages aforesaid; because he saith, That such Record of the Recognizance aforesaid is had, as he by his Writ aforesaid above, hath supposed; and this he is ready to aver. Wherefore the aforesaid Plaintiff demands Execution of the Debt and Damages aforesaid, in Form aforesaid acknowledged, by Pretence of the Recognizance aforesaid, to be adjudged to him, &c.

Another.

And this he is ready to aver, by the Record of the Recognizance aforesaid, as appears in the Court of the said Lord the King, before the King himself at *Westminster*, in the aforesaid Term of — in the 66th Roll. And upon this the aforesaid Plaintiff prays, that the Record of the Recognizance aforesaid by the Court here, may be seen and inspected, &c.

Acknowledgment of Restitution.

— Afterwards, to wit, on *Wednesday* next, after — in the sixth Year of the Reign of the Lord *George*, now King of *Great Britain*, before the same Lord the King at *Westminster*, came the aforesaid *I*, by *R G* his Attorney, and acknowledged himself to have had

had Restitution from the aforesaid *W*, of all King's Bench Sums of Money, which he the same *I*, by occasion of the Judgment aforesaid, lost ; therefore the same *W* of all such Sums of Money may be thereupon discharged, &c.

Non Prof. for not Declaring after the Cause removed by Habeas Corpus.

London, to wit *C D*, who was arrested by Virtue of a certain Plaint, levied in the Court of the Lord George, now King, held at London aforesaid, in the Guildhall of the same City, — Day of — in the sixth Year of the Reign of the said Lord the King, before *H P*, Esq; one of the Sheriffs of the City of London aforesaid, against him *C*, at the Suit of *A B*, in a certain Plea of Trespas upon the Case, to the Damage of him *A*, 100 *l*. And for default of sufficient Bail, and Security to answer to the aforesaid *A*, in the Plea aforesaid, was detained in the Prison of the Lord the King, under the Custody of the aforesaid *H P*, Esq; then one of the Sheriffs of the City aforesaid, for the Cause aforesaid. And afterwards, to wit, — Day of — in the sixth Year above said, the same *C*, by Virtue of a certain Writ of the said Lord the King, for — having the Body with the Cause, directed to the Mayor and Aldermen, and Sheriffs of the City of London, and issuing out of the Court of the said Lord the King, before the King himself at Westminster, was brought by the aforesaid *H P*, then one of the Sheriffs of the City aforesaid, afterward, to wit, the same — Day of —
X in

King's Bench. in the sixth Year abovesaid, before *E R*, Knt. one of the Justices of the said Lord the King, assigned to hold Pleas in the Court of him the Lord the King, before the King himself, at his Chamber, situate in *Serjeants-Inn*, in *Fleet-Street*, *London*. And then and there for want of Bail, and Security to answer the abovesaid *A B*, in the Plea abovesaid, was committed by the same Justice, to the Custody of the Marshal of the *Marshalsea*, of the Court of the said Lord the King, before the King himself, at the Suit of the abovesaid *A B*, in the Plea abovesaid. And the abovesaid *C* so being in the Custody of the Marshal of the *Marshalsea* abovesaid, the abovesaid *A B* did not exhibit into the same Court of the Lord the King, before the King himself, his Bill, or Declaration in any Action whatsoever, within two Terms after the Commitment of him *C*, into the Custody of the Marshal of the *Marshalsea* abovesaid, at the Suit of the abovesaid *A*, as is reported, nor his Complaint abovesaid, against the abovesaid *C* further prosecuted. Therefore it is considered that the abovesaid *A* shall take nothing by his Complaint abovesaid, but that he and his Pledges of prosecuting, to wit, *J Doe*, and *R Doe*, may be thereupon in Mercy, &c. And the abovesaid *C* may on this Account go without a Day, &c.

Entry

*Entry of a Non Prof. upon a King's Bench
Latitat.*

London, to wit, *A B* was arrested by Vir-^{No Rule is gi-}
tue of a Writ of the Lord the King, of *Latit-*^{ven to declare,}
at, issuing out of the Court of the said Lord
the King, before the King himself, and di-
rected to the Sheriffs of *London*, returnable ^{Note, These}
before the said Lord the King at *Westminster*, ^{Judgments up-}
as of *Easter* Term, on *Wednesday* next, after ^{on Non Prof.}
— now last past, to answer *C D* of a Plea ^{must be drawn}
of *Trespass*: And the same *A B* appeared at ^{upon Double}
the same Day, by — his Attorney, ac- ^{Half Crown}
cording to the Form of the Statute, in the ^{Stamps, and}
like Case lately made and provided. And ^{Entred with}
the aforesaid *C D*, in the same Court of the ^{Mr. Lantrow,}
said Lord the King, before the King himself ^{and Costs Sign-}
at *Westminster*, by his Bill, or Declaration in ^{ed by the Mas-}
any Personal Action, or of Ejectment, against ^{ter; as in}
him *A B*, before the End of the Term of ^{other Judg-}
the *Holy Trinity*, from thence next following, ^{ments by Con-}
being the next Term after the Appearance ^{fession, or Non}
of him *A B*, at the Suit of *C D*, hath not ^{informatus,}
declared: Therefore it is considered, that
the aforesaid *C D*, shall take nothing by his
Writ aforesaid, but that he may be in Mer-
cy, &c. And it is further considered, that
the aforesaid *A B*, should recover against the
aforesaid *C D*, 30 s. for his Costs and Charges,
by him about his Defence in this Behalf
sustained, adjudged to the same *A B*, by the
Court of the said Lord the King, now here,
according to the Form of the Statute, in the
like Case lately made and provided: And

King's Bench. that the aforesaid *A B*, may have Execution thereof, against the aforesaid *C D*, &c.

Entry of a Non Prof. upon an Action by Latitat, and Judgement thereupon.

Somerſet, *A B* was arrested at the Suit of *C D*, by Virtue of a Writ of the Lord the King, of *Latitat*, returnable before the Lord the King, at *Westminster*, (*such a Day as in the Latitat*,) in the sixth Year of the Reign of the said Lord, the now King. And the aforesaid *C*, then and there, brought in the Court of the Lord the King here, his certain Bill against the aforesaid *A*, in Custody of the Marshal, &c. of a Plea, &c. which said Bill, the same *C D*, against the aforesaid *A*, did not afterwards prosecute: Therefore 40 s. are adjudged to the same *A*, for his Costs and Charges, by him in this Particular expended, according to the Form of the Statute, &c. (*as afterwards*.)

Another.

— *L.* to wit, *A B*, who brought his Bill of a Plea of Trespass, against *C D*, to appear by Pretence of a Writ of the Lord the King, of *Latitat*, at the Suit of him *A B*, and hath not prosecuted that Writ in the Court of the Lord the King aforesaid issuing; therefore forty Shillings are adjudged to the same *C*, by the Court of the Lord the King here, for his Costs and Charges, according to the Form of

Non Prosequendo.

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of the Statute, &c. And he and his Pledges ^{King's Bench,} of prosecuting, to wit, *John Doe*, and *Richard Roe*, in Mercy, &c. And the aforesaid *A*, may go thereupon without a Day, &c.

*Another, for not Declaring within
three Days.*

To wit, *A B* being arrested at the Suit of *R G*, hath personally appeared before the Lord the King at *Westminster*, on *Wednesday* next, after — And because the aforesaid *R*, hath not declared against the aforesaid *A B*, within three Days from thence next following, therefore twelve Shillings are adjudged to the same *A*, by the Court of the Lord the King, for Costs and Charges, according to the Form of the Statute, &c.

*Entry of a Non Prof. for want of the
Plaintiff's Replication.*

After setting forth the Proceedings, say,

And upon this the aforesaid Defendant prays, That the Plaintiff to the Plea of him the Defendant, might reply; upon which a Day (as in the Rule that is given,) is given by the Court of the said Lord the King now here, to the aforesaid Plaintiff to reply to the aforesaid Plea of the aforesaid Defendant; and the same Plaintiff is required by the Court of the said Lord the King now here, that he at the same Day should reply, at which Day the aforesaid Defendant came

You take this Rule from the Master, and enter it with the Clerk of the Papers, and serve it on the Plaintiff's Attorney.

Non Prosequendo.

King's Bench. by his Attorney aforesaid, before the Lord the King at *Westminster*. And the aforesaid Plaintiff, although solemnly required, did not come, nor to the Plea of the aforesaid Defendant hath replied, nor further prosecuted his Bill aforesaid, against the same Defendant. Therefore it is considered by the Court here, that the aforesaid Plaintiff should take nothing by his Bill aforesaid, but that he and his Pledges of prosecuting, to wit, *John Doe*, and *Richard Roe*, may be in Mercy, and the aforesaid Defendant thereupon go without a Day, &c. And it is further considered by the Court here, that the aforesaid Defendant should recover against the aforesaid Plaintiff, 3 *l.* for his Costs and Charges, by him sustained, about his Defence aforesaid, in this Behalf adjudged to the same Defendant, by the Court of the Lord the King now here, according to the Form of the Statute in the like Case thereupon made and provided. And the same Defendant may have Execution, &c.

Non Prof. for not joining in Demurrer.

And upon this the same Defendant prays, That the aforesaid Plaintiff may joyn in Demurrer with the same Defendant ; and thereupon a Day is given by the Court of the said Lord the King now here, to the aforesaid Plaintiff, to joyn with the same Defendant in the aforesaid Demurrer in Law, before the Lord the King at *Westminster*, until *Tuesday* next, after the *Octaves* of *St. Martin*, from thence next following. And the aforesaid Plaintiff

Non Prosequendo.

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Plaintiff at the same Day being solemnly re- King's Bench
quired, did not come, nor further prosecuted his Bill aforesaid, against the aforesaid Defendant, but made Default. It is therefore considered, that the aforesaid Plaintiff shall take nothing by his Bill aforesaid, but that he and his Pledges of prosecuting, to wit, *John Doe*, and *Richard Roe*, may be in Mercy: And the aforesaid Defendant may thereupon go without a Day, &c. And further, &c. (*as before.*)

Entry of a Non Prof. for want of a General Issue.

And of this he puts himself upon the Country: And the aforesaid Defendant ^{*You must take a Rule as before.*} prays, That the aforesaid Plaintiff might reply to the Plea of him the Defendant; upon which the same Plaintiff is called on by the Court of the said Lord the King now here, that he should reply to the aforesaid Plea, and enter his Issue in the Plea aforesaid, on *Wednesday* next, after — at his Peril. Afterwards, that same Term, came the aforesaid Defendant, by his Attorney aforesaid, before the said Lord the King at *Westminster*; and the aforesaid Plaintiff, though solemnly required, did not come, nor hath replied to the Plea of the aforesaid Defendant, nor farther prosecuted his Bill aforesaid, against the same Defendant. Therefore, (*as above.*)

X 4

Non

King's Bench:

*Non Prof. against the Plaintiff in Debt,
after Demurrer joined, and Costs
for the Defendant.*

At which Day the aforesaid Defendant, by his Attorney aforesaid, came into Court here, and the aforesaid Plaintiff, the fourth Day of the Plea, being solemnly required, did not come, nor further prosecute his Bill aforesaid; therefore he and his Pledges of prosecuting, may be in Mercy, &c. and the aforesaid Defendant may thereupon go without a Day, &c. It is also considered, that the aforesaid Defendant should recover against the aforesaid Plaintiff, his Damages, by occasion of the Premises, to — by the Court here adjudged to the same Defendant, at his Request for his Costs and Charges, in that Behalf sustained, according to the Form of the Statute thereof lately made and provided, &c. (*as in others.*)

The Plaintiff would not further prosecute after Issue joined.

Afterwards, to wit, the seventh Day of — in the sixth Year, &c. the aforesaid Plaintiff came here into Court by his Attorney aforesaid, and confesses himself here in Court, that he would not further prosecute against the aforesaid Defendant, in the Plea aforesaid; therefore the same Defendant may go thereof without a Day, &c.

Entry

Entry of a Non Prof. at Bar.

Who to the Truth of the under contained being called, were chosen, tryed and sworn, and to the Bar of this Court to give their Verdict, of, and upon the Premises, to consult among themselves, withdrew; and afterwards, at the same Bar, returned to give their Verdict in this Particular; upon which the aforesaid Plaintiff being solemnly required, did not come, nor pursue his Bill underwritten. Therefore, &c.

*Continue the
Postea as in
others, unto*

*Original W R I T S.**Of Proceedings by Original Writ in the King's Bench.*

IT is before observed under Ejectment, that the Proceedings in this Court by Original Writ, are almost the same as in the Court of Common Pleas.

But Note, You seldom proceed against any Person by Original in the King's Bench, in Actions of *Debt, Detinue, Covenant, or Account*; though you may in all other Personal Actions. Whereas the Court of Common Pleas, in their Way of proceeding by Original, do take in all manner of Actions, as well real as Personal, and mixt.

If the Defendant is to be arrested, or served with a Copy of the Process in *London*, you draw a *Precipe* for the Filacer in this Form,

London,

King's Bench.
Precipe.

London; to wit, If *A B* shall make you secure, then put *C D* late of — (*naming the Place of the Defendant's Abode,*) in your Bailiwick, to answer to the aforesaid *A B*, of a Plea, why with Force and Arms, the Close and House of him *A*, at the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*, he broke, and other Enormities brought on him, to the great Damage of him *A*, and against the Peace, &c.

Original returnable in the King's Bench, in the *Octaves of Hillary*, &c. Wherefoever, &c.

E. T. Attorney for the Plaintiff.

If the Action be laid in *Middlesex*, then you must draw your *Precipe* thus :

*Precipe in
Middlesex.*

Middlesex, to wit, If *A B* make thee secure, then put *C D*, late of *Islington*, in this County, Esq; &c.

The Original is the Foundation of the *Capias*, and all other Proceſs ſued out afterwards; the Return whereof is usually the Teſte, (Date,) of the *Capias*, except it be upon the Eſſoin Day of any Term, and then the *Capias* muſt be teſted the firſt Day of that Term, and there muſt always be fifteen Days between the Teſte and Return of the Original, and likewise of the *Capias*.

But if you ſet down the Return of the *Capias*, the Filacer of courſe takes Care of the Reſt; for moſt commonly the *Capias* is taken out before the Original, (as the Courſe is in the Common Pleas,) by leaving the *Precipe*

cipe with the Filacer, who makes you out a King's Bench *Capias* thereupon; or you may for Expedition, make your *Capias* out your self, and let your Filacer sign it, and then carry it to be sealed, at the Seal-Office. The *Precipe* is left with the Filacer, and he carries it with others in convenient Time to the Cursitor, who makes him Originals thereupon; and after they are sealed, delivers them to the Filacer, who, after they are returned, files them with the *Custos Brevium*.

The Form of the Capias in London, is as follows.

George the Second, by the Grace of God, *The Capias.*
of Great Britain, France, and Ireland, King,
Defender of the Faith, &c. To the Sheriffs
of London, Greeting: We command you that
you take *C D*, late of, &c. if he shall be found
in your Bailiwick, and him safely keep, so
that you may have his Body before us in
fifteen Days of *Easter*, wheresoever we shall
then be in *England*, to answer unto *C D* of a
Plea, (*setting forth the Action as in the Precipe*),
to the Damage of him *A* — Pounds, as it
is said, and have there this Writ. Witness
Robert Lord Raymond at Westminster, — Day
of — in the sixth Year of our Reign.

If the Defendant cannot be taken where
the Action is laid, but resides in some other
Country, then upon a *Non est Inventus* (he is
not to be found,) returned upon the *Capias*,
directed to the Sheriff of the County where
the Action was first laid, the Filacer thereof
will make you a *Testatum Capias* into any
other

King's Bench. other County, or the Filacer will make you out, or you may make out your self a *Testatum Capias*, without first taking out the *Capias*, and this *Testatum Capias* is often sued out by the Filacer of *London* and *Middlesex*, in order to try the Cause there, if the Defendant resides in another County.

The Form of a Testatum Capias, out of London into Berks.

George, &c. to the Sheriff of *Berks*, Greeting. We command thee, that thou take *CD*, late of *R*, in the County of *Berks*, Gent. if he shall be found in thy Bailiwick, and him safely keep, so that thou may have her Body before us, (*the Return*) wheresoever we shall then be in *England*, to answer unto *AB*, of a Plea, (*as in the Precipe*) and after (as it is said) you add, for that our Sheriffs of *London* have signified to us, at a certain Day now past, that the aforesaid *C* is not to be found in their Bailiwick, it being since testified in our Court before us, that the aforesaid *C* hides and skulks in thy County, and have thou there this Writ. Witness, Lord *Raymond*, &c.

The *alias* and *pluries Capias*, and *Testatum Capias*, are the same as the former, only adding after, *We command thee, as at other Times*, (or many Times) *We have before commanded thee*, &c.

On these special Writs by Original (where the Damages are laid above 40 *l.*) you pay a Fine to the King, which the Filacer receives for the Cursitor, and is as followeth.

From

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From 40 <i>l.</i> to 66 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> that is, 100 Marks,	}	00	06 08
From 100 Marks to 100 <i>l.</i>			
From 100 <i>l.</i> to 133 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> that is, 200 Marks,	}	00	13 04
From 200 Marks to 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i>			
From 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> to 200 <i>l.</i>		01	00 00
For every 100 Marks more,		00	06 08
For every 100 <i>l.</i> more,		00	10 00

Upon this *Capias*, the Defendant is arrested if bailable, and the Sum for which the Defendant is held to Bail, must be endorsed on the Back of the *Capias* in this Manner, *the Plaintiff's Affidavit filed for* (the Sum in the Affidavit) and the Filacer signs it.

The Defendant being arrested, and Bail ^{if the Defendant be only served, he must enter his Appearance with the Filacer.} above being put in before the Filacer, you then proceed to draw your Declaration in this Manner.

Trinity, *the Sixth of King George the Second.*

London, to wit. *CD*, late of (*as in the Capias*) was attached to answer *AB*, of a Plea, (*as the Case is*) and wherefore the same *A*, by *ET*, his Attorney, complains, wherefore (*verbatim, as in the Charge*) but instead of (*as it is said*) you say, and thereof brings his Suit, &c.

You write this Declaration copy-wise, deliver it to the Defendant's Attorney, who will pay 4 *d.* a Sheet. You give a Rule to plead with the Clerk of the Rules, and demand a Plea.

King's Bench. Plea of the Defendant's Attorney, before the Rule to plead is out.

Note, It is said, that if the Writ be returnable, the first Return of *Hilary* or *Trinity* Term, or the first or second Return in *Easter* or *Michaelmas* Term, the Defendant must plead the same Term, if Rules are given in Time. If it be a Country Cause, the Defendant may plead at any Time in the Term, but if the Cause be laid in *London* or *Middlesex*, the Defendant must plead before the Rules to plead are out.

If the Defendant pleads, you make up the Record, sue out your *Venire*, *Distringas* and *Subpœna's*, making them returnable on a general Return Day, *wheresoever*, (&c.) as is before directed.

You sign these Writs with the same Filacer, but you enter your Proceedings with Mr. *Lantrow*, seal your Record at the *Nisi Prius* Office in *Grays-Inn*, draw your *Breviats*, see your Counsel, summon your Witnesses, and proceed to Trial.

And if there be a Verdict against the Defendant, you must give a Rule upon the *Postea*, then stamp and enter it, and sign your Judgment with the Secondary, who will tax your Costs, then sue out your Writ of Execution, making it returnable, as others, on a general Return Day, *wheresoever*, &c.

Observe, that if the Defendant pleads specially, the Plaintiff's Attorney hath the Liberty of making up the special Pleadings himself, without applying to the Clerk of the Papers for that Purpose.

But

But *Note*, That the Court will not grant *King's Bench* Oyer of any Original, unless Oyer is demanded within Four Days after the Rule to plead is given. If the Defendant does not plead, but lets Judgment go by Default against him, you proceed, in the usual Manner, to execute a Writ of Enquiry in the following Form.

Writ of Enquiry:

George the Second, &c. to the Sheriffs of London, Greeting; Whereas C D, late of, &c. was attached to be in our Court before us, of a Plea, &c. (and so on, as in the Declaration) to the Damage of him A. — Pounds, as it is said, and in such Sort, &c. before in the King's Bench, only you make the Writ returnable on a general Return Day, wheresoever, &c. and after (that Inquisition) say, You shall take, send, together with this Writ. Witness Lord Raymond, &c.

In this Method of Proceeding by Original Writ, a Writ of *Error* cannot be brought, or at least returnable, but when the Parliament is sitting.

OUTLAWRY.

Of proceeding by Original to the Outlawry.

YOU may proceed in Trespass, and Trespass upon the Case, but not in Debt or Covenant, which is thus. You must draw up your Instructions for the Original, according

King's Bench. according to your Case, and carry it to the Curfitor of the County, where you will try the Action. If you carry it within the first Week of the Term, then the Original will be returnable the first Day of the next succeeding Term; but you must take Care that your Action did arise so long since, so as not to date the Original before the Cause of Action.

Then carry your Original to the Filacer of the County (who will make you out *Capias alias & Pluries*) if you proceed to Outlawry, each of which must be 15 Days between the Date and the Return; you return them *non est inventus*, (is not to be found) of Course, and file them with the *Custos brevium*, and the same Filacer will make you out an Exigent and Proclamation, which are made returnable after five County Courts, (which are held but once in four Weeks) if the Action be laid in the Country.

But if it be laid in *London*, six Weeks Time will serve, because the Hustings are held every Fortnight. The Filacer of *London* and *Middlesex* will of Course make you out the *Capias alias and pluries*, and gets them returned and filed himself, and will likewise make out for you the Exigent and Proclamation. You seal the Exigent, and carry it to one of the Compters, to be perfected, and the Proclamation being sealed, you send it down to the Sheriff of the County, of which the Defendant is named, to be executed. When the Proclamation is returned, you should file it with the *Custos brevium*, and your Exigent being also returned, you carry it to the Clerk of the

He also files Warrants of Attorney for you.

In London you file it with the Filacer.

the

the Outlawries, who will make you out a ^{King's Bench.} *Capias Utlagatum*, either general or special, the one is against the Body only, the other against Body, Lands, and Goods.

If there be not five County Days between the Teste and Return of the Exigent, you may procure an *Allocatur* from the Exigent, to bring in the five County Days; and so in *London*, if a Hustling be wanting.

If the Defendant appears on the Exigent, and supercedes the Outlawry, wherein having entered an Appearance by Attorney, with the Filazer, the Plaintiff is to declare against him, and deliver the Defendant's Attorney a Copy of the Declaration, to which the Defendant, if Rules are given in Time, must plead the same Term; and if there be special Pleadings, the Plaintiff's Attorney has the Priviledge of making up the Paper Book, &c.

See after, Title *Exigent* and *Outlawry*, more concerning the Method of appearing to and superseding the Exigent, and reversing the Outlawry.

A FURATA upon a Writ of Scire Facias.

THE same Day is given to the Parties aforesaid there, &c. at which Day, before the Lord the King at *Westminster*, came the Parties aforesaid, by their Attornies aforesaid, and the Sheriff, to wit, *A B*, returned the Writ of the Lord the King of *Venire Facias*, directed to him in Form aforesaid, served and executed in all Things, together

King's Bench.

gether with the Panell of the Names of the Jurors annexed to the same Writ, of whom None, &c. Therefore it is commanded to the same Sheriff, that he compel the Jurors aforesaid by all their Lands, &c. and that of the Issues, &c. so that he may have their Bodies before the Lord the King, in fifteen Days from the Day of *Easter*, wheresoever, &c. or before the Justices of the Lord the King, assigned to hold the Assizes in the County of *S*, if before *Thursday* the — Day of — at — by Form of the Statute, &c. came for Defect of Jurors, &c. the same Day is given to the Parties aforesaid there, &c. and it is to be known, &c. as before, in other *Jurata's*.

Upon an Original.

To wit, the Jurors between *DE* Plaintiff, and *AB*, late of *C*, in the County aforesaid, Yeoman, of a Plea of Trespass upon the Case, is Respited before the Lord the King, in three Weeks from the Day of *St. Michael*, wheresoever, &c. unless the Justices of the Lord the King, assigned to hold the Assizes in the County aforesaid, &c. (*as in others*) the same Day is given to the Parties aforesaid, &c. and it is to be known, &c. (*as in others, see before.*)

Note, The Day in Bank must be on a Return Day, but the Day of Trial on a Day certain, as *Thursday* the fourteenth Day of *September*, &c.

Upon

Upon an Audita Querela.

To wit, the Jury between *A B*, by his Attorney, Plaintiff, and *C D*, to take Knowledge, whether Administration of all the Goods and Chattels, Rights and Credits, which were *E F*, deceased, was committed to *G H*, or not, is put in Respite before the Lord the King, in fifteen Days from the Day of *Easter*, wherefoever, &c. or before the Justices, &c. as before.

If in London, say,

Wheresoever, &c. unless *Robert Lord Raymond*, Chief Justice of the Lord the King, assigned to hold Pleas in the Court of him the Lord the King, before the King himself, before, &c. (*as before, upon the like Jurata.*)

Upon a Writ of Error brought, and Issue.

L. to wit, the Jury between *A B*, late of, &c. by his Attorney, Plaintiff, and *C D*, Gent. to find upon their Oath, whether the aforesaid *A B*, at the Time of rendering the Judgment aforesaid, against the same *A B*, at the Suit of the aforesaid *C*, to wit, on *Friday* next after the Morrow of the *Holy Trinity*, in the Year 1732, and in the sixth Year of the Reign of the said Lord the King, was under the Age of twenty one Years, or not, is Respited, &c.

King's Bench. *When the Sheriff is a Party to the Record, say at the latter End.*

It is delivered of Record to the Coroners of the County aforesaid, in Form of Law, to execute at their Peril, &c.

Where the Plaintiff's or Defendant's Addition, in the Beginning of the Record, is Esquire, and the Conclusion is Knight, then in the Jurata say, *lately Esquire, now Knight*, and so of other Titles.

I have seen a Precedent for a Jurata upon a Scire Facias thus.

The Jury between *A B*, in his proper Person, Plaintiff, and *C D*, of a Plea of Debt; wherefore the *Scire Facias* is put in Respite. — *But others said it must be as is before mentioned, and shewed a Jurat' upon Record in the same Term.*

Select

C A S E. (Assumpsit.)

LONDON, to wit, *AF* complains of *On a promissory Note, or foreign Bill of Exchange.*
JW, Gentleman, in Custody of the
 Marshal of the Marshalsea of the Lord the
 King, before the King himself; for that, to
 wit, That whereas the aforesaid *JW*, after
 the first Day of *May*, in the Year of our Lord
 One thousand seven hundred and five, to
 wit, on the Twenty seventh Day of *December*,
 in the Year of our Lord One thousand seven
 hundred and twenty seven, at *Boston* in *New*
England, to wit, in the Parish of the blessed
Mary of the Arches, in the Ward of *Cheap*,
 made three promissory Notes, of the same
 Date, Tenor, and Effect: And by the first
 Note of the aforesaid three Notes, the afore-
 said *JW*, at twenty Days after Sight of the
 aforesaid first Note, (the second and third of
 the same Tenor and Date not being paid)
 promised to pay, or cause to be paid to the
 Y 3 afore-

King's Bench. said *A*, by the Name of *AF*, Merchant, then present in *London*, or his Order, 554 *l.* 7 *s.* Sterling Money of *Great Britain*, in Exchange and Lieu of 776 *l.* 1 *s.* 6 *d.* Currant Money of *New England*, there received of the aforesaid *A*, which was the Ballance of Accompts between the aforesaid *I* and *A*. And also whereas afterwards, to wit the fourth Day of *February*, in the Year of our Lord last aforesaid, in the Parish and Ward aforesaid, (the aforesaid second or third Note of the aforesaid three Notes not being paid,) the aforesaid *IW* had Sight of the aforesaid first Note, by Virtue of which said Premises, and also by Force of the Statute in such Case made and provided, the aforesaid *IW* was charged, and became chargeable, to pay to the aforesaid *A*, the aforesaid Sum of 554 *l.* 7 *s.* Sterling in the aforesaid first Note contained, according to the Tenor and Effect of the same Note. And being so thereof charged and chargeable, (the aforesaid second or third of the aforesaid three Notes, then or hitherto not being paid,) the aforesaid *IW* afterwards, to wit, the same Day and Year last mentioned, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof assumed upon himself, and to the same *A* then and there faithfully promised, that he the same *IW*, the aforesaid 554 *l.* 7 *s.* Sterling, in the aforesaid first Note mentioned, to the same *A*, would well and faithfully pay and content, according to the Tenor and Effect of the same Note. And also, whereas on the aforesaid 27th Day of *December*, in the Year of our Lord 1727, and long before and after-

afterwards the aforesaid *I W* was a Merchant, King's Bench.
 and a Person residing and trading in Parts
 beyond the Seas, to wit, at *Boston* in *New*
England aforesaid, and one *R W*, and the
 aforesaid *A F*, then, and for the whole same
 Time were, and still are Merchants, resi-
 ding and trading within this Kingdom, to
 wit, at *London* aforesaid, in the Parish of the
Blessed Mary of the Arches, in the Ward of
Cheap; and the same *John* being so residing,
 and trading, he the same *John*, on the same
 twenty seventh Day of *December*, in the Year
 of our Lord aforesaid, at *Boston* aforesaid, in
 Parts beyond the Seas aforesaid, according
 to the Use and Custom of Merchants in that
 Case used, and approved of, from the Time
 whereof the Memory of Man is not to the
 contrary, made three Bills of Exchange in
 Writing, of the same Tenor, and for one
 and the same Sum of Money, to wit, the first,
 second, and third Bill of Exchange, bearing
 Date the same twenty seventh Day of *De-*
cember, in the Year last aforesaid, and di-
 rected the same Bills to himself, the aforesaid
I W, or in his Absence to the aforesaid *R W*,
 then trading at *London* aforesaid, in the Parish
 and Ward aforesaid; and by the aforesaid
 first Bill of Exchange, required himself, or in
 the Absence aforesaid, the aforesaid *R W*, at
 twenty Days after Sight of the same first Bill
 of Exchange, (his second and third of the
 same Tenor and Date not being paid,) to
 pay, or cause to be paid to the said *A F* pre-
 sent in *London*, or his Order, other 554 *l.* 7 *s.*
 Sterling Money of *Great Britain*, in Return,
 and Place of other 776 *l.* 1 *s.* 6 *d.* Current
 Y 4 Money

King's Bench. Money of New England, there received of the aforesaid *A*, which was the Ballance of Accompts between the aforesaid *I* and *A*. And whereas afterwards, to wit, on the fourth Day of *February*, in the Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, the same *A* shewed to the aforesaid *I W*, the same first Bill of Exchange, and the aforesaid *I W* upon Sight of the same first Bill, according to the aforesaid Use and Custom of Merchants used Time out of Mind, the same first Bill of Exchange then and there accepted, to pay according to the Tenor thereof, (the aforesaid second or third Bills of Exchange, or either of them, then, or still being unpaid,) by which, and also by Force of the aforesaid Custom of Merchants, from the Time whereof the Memory of Man is not to the contrary, in that Case used and approved of, the aforesaid *I W* became chargeable, and is charged to pay to the same *A*, the aforesaid Sum of 554 *l.* 7 *s.* Sterling, in the same first Bill of Exchange mentioned, according to the Tenor and Effect of the same Bill. And being so thereof charged and chargeable, the same *John* in Consideration thereof afterwards, to wit, the same fourth Day of *February*, in the Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, assumed upon himself, and to the same *A* then and there faithfully promised to pay the aforesaid Sum of 554 *l.* 7 *s.* Sterling in the same first Bill of Exchange contained, according to the Form and Effect of the same Bill. And whereas also the aforesaid *J W* afterwards,

to wit, on the twenty eighth Day of *March*, King's Bench.
in the Year of our Lord Seventeen Hundred For Money had
and twenty eight, at *London* aforesaid, in the and received,
Parish and Ward aforesaid, was indebted to and Money lent
the same *A* in other 554 *l. 7 s.* Sterling, for
such a Sum of Money of him *A*, by the
aforesaid *I*, to the Use of him *A*, before that
Time had and received; and for other
Money by the same *A*, at the special In-
stance and Request of the aforesaid *I*, to the
said *I*, then before given upon Loan and lent.
And being so thereof indebted, the afore-
said *I*, in Consideration thereof afterwards,
to wit, the same Day, and Year last above-
said, at *London* aforesaid, in the Parish and
Ward aforesaid, assumed upon himself, and
to the same *A* then and there faithfully pro-
mised, that he, the aforesaid *I*, the aforesaid
554 *l. 7 s.* Sterling last mentioned, to the
same *A*, when thereof afterwards requested,
would well and faithfully pay and content.
And whereas also the aforesaid *I* and *A* af- Accompted to-
terwards, to wit, the same Day and Year gether.
last abovesaid, at *London* aforesaid, in the
Parish and Ward aforesaid, Accompted to-
gether among themselves for several Sums of
Money to the same *A*, by the aforesaid *I*,
then being due and unpaid; and upon that
Account, the aforesaid *I* then and there was
found in Arrear towards the same *A*, in an o-
ther Sum of 554 *l. 7 s.* Sterling, and being
so thereof found in Arrear, the same *John*
in Consideration thereof assumed upon him-
self, and then and there faithfully promised
the same *A*, that he the same *John*, would
well and truly pay, and satisfy the same *A*,
the

Custody of the Marshal, &c. for that, to wit, King's Bench
 That whereas the aforesaid *James*, on the fourth
 Day of *November*, in the Year of our Lord One
 Thousand seven Hundred and twenty six, at
Westminster, in the County aforesaid, in Con-
 sideration that the aforesaid *Edward Lord Cornbury*
 in his Life-time, at the special In-
 stance and Request of the aforesaid *James*,
 by a certain Writing under the Hand of him
Edward Lord Cornbury, (as much as in him
 lay,) had assigned to the aforesaid *James*, a
 certain Debt of Eight Hundred and sixteen
 Pounds, due to the same *Edward Lord Corn-*
bury, from one *Andrew Cumpsty*, assumed upon
 himself, and then and there faithfully pro-
 mised the same *Edward Lord Cornbury*, that
 he, the aforesaid *James*, would pay to the
 aforesaid *Edward Lord Cornbury*, One Hun-
 dred and seven Pounds, on the twenty fourth
 Day of *June*, in the Year of our Lord One
 Thousand seven Hundred and twenty seven ;
 and other One Hundred and seven Pounds,
 on the twenty fourth Day of *June*, in the
 Year of our Lord One Thousand seven Hun-
 dred and twenty eight. And although the
 aforesaid *James*, after the making of his Pro-
 mise aforesaid, to wit, on the twenty fourth
 Day of *June*, in the Year of our Lord, One
 Thousand seven Hundred and twenty seven,
 paid to the aforesaid *Edward Lord Cornbury*,
 the first of the aforesaid two Sums of One
 Hundred and seven Pounds, according to his
 Promise aforesaid thereof. Yet the aforesaid
James, his Promise and Assumption afore-
 said, as to the Sum of One Hundred and se-
 ven Pounds last above-mentioned, to be paya-
 ble

King's Bench.

ble on the twenty fourth Day of *June*, in the Year of our Lord One Thousand seven Hundred and twenty eight, as aforesaid, little regarding, but contriving, and fraudulently intending the aforesaid *Edward Lord Cornbury* in his Life-time, and him *John* after the Death of the aforesaid *Edward Lord Cornbury* in this Behalf, craftily and subtilly to deceive and defraud, hath not paid, or any ways satisfied the said Sum of One Hundred and seven Pounds, payable on the aforesaid twenty fourth Day of *June*, in the Year of our Lord One Thousand seven Hundred and twenty eight, as aforesaid, or any Penny thereof, to the aforesaid *Edward Lord Cornbury* in his Life-time, or to the same *John*, (after the Death of him *Edward Lord Cornbury*) to whom Administration of all the Goods and Chattels, which were the aforesaid *Edward Lord Cornbury* at the Time of his Death, with his Will annexed, during the Minority of the aforesaid *Theodosia*, who still is under Age, by *Thomas*, of Divine Providence, Archbishop of *Canterbury*, Primate and Metropolitan of all *England*, on the twenty third Day of *November*, in the Year of our Lord, One Thousand seven Hundred and twenty seven, at *Westminster* aforesaid, in due Manner was committed ; but hath refused, and still doth refuse to pay him the same, in Delay of Administration of the Goods and Chattels aforesaid : Wherefore he saith, That he is the worse, and hath Damage to the Value of Two Hundred Pounds, and thereof brings his Suit ; and brings here into Court the Letters of Administration of the aforesaid Archbishop, which

which by the Commission of the Administration aforefaid, in Form aforefaid, are attested, &c. King's Bench.

Pledges of profecuting, &c.

For Goods Sold and Delivered.

London, to wit, *James L*, complains of *S K*, in Custody of the Marshal, &c. for that, to wit, That whereas the aforefaid *Samuel*, on the twelfth Day of *June*, in the Year of our Lord One Thousand seven Hundred and thirty, at *London*, in the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*, was indebted to the aforefaid *James*, in forty Pounds of lawful Money of *Great Britain*, for diverse Goods, Wares, and Merchandizes, to the same *Samuel*, by the same *James*, at the special Instance and Request of him *Samuel*, before that Time sold and delivered. And being so thereof indebted, he, the aforefaid *Samuel*, in consideration thereof, afterwards, to wit, the same Day and Year, at *London* aforefaid, in the Parish and Ward aforefaid, assumed upon himself, and to the same *James* then and there faithfully promised, that he, the aforefaid *Samuel*, the aforefaid forty Pounds, to the same *James*, when he should be thereto required, would well and truly pay and satisfy. And whereas also the aforefaid *Samuel* afterwards, to wit, on the twelfth Day of *July*, in the Year abovefaid, at *London* aforefaid, in the Parish and Ward aforefaid, was indebted to the same *James* in other forty Pounds, for diverse Goods, Wares, and Merchandizes, to the same *Samuel*, by the afore-

King's Bench.
The Value of
the Goods.

aforesaid *James* before then sold and delivered : And the aforesaid *Samuel* so being thereof indebted, he, the aforesaid *Samuel*, in Consideration thereof afterwards, to wit, the same Day and Year abovesaid, assumed upon himself, and to the same *James* then and there faithfully promised, that he, the aforesaid *Samuel*, such Sums of Money as the same Goods, Wares, and Merchandizes aforesaid, at the Time of the Sale and Delivery of them were reasonably worth, to the same *James*, when he should be thereof afterwards requested, would well and truly pay and content. And the same *James* avers, that the Goods, Wares, and Merchandizes aforesaid, at the Time of the Sale and Delivery of the same, were reasonably worth other forty Pounds of lawful Money of *Great Britain*, whereof the same *Samuel* afterwards, to wit, the same Day, Year and Place abovesaid had Notice. And whereas also the aforesaid *Samuel* afterwards, to wit, the twelfth Day of *August*, in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, accounted together with the same *James*, of, and concerning diverse Sums of Money to the same *James*, by the aforesaid *Samuel*, before that Time due, and then being in Arrear and unpaid ; and upon that Account the aforesaid *Samuel* then and there was found in Arrear, towards the aforesaid *James*, in other forty Pounds of like lawful Money of *Great Britain* ; and being so thereof found in Arrear, the aforesaid *Samuel*, in Consideration thereof afterwards, to wit, the same Day and Year aforesaid, at *London* aforesaid.

aforesaid, in the Parish and Ward aforesaid, King's Bench assumed upon himself, and to the same *James* then and there faithfully promised, that he the same *Samuel*, the aforesaid forty Pounds last mentioned to the same *James*, when he should be thereof afterwards requested, would well and truly pay and satisfy. Notwithstanding the aforesaid *Samuel* his several Promises and Assumptions aforesaid, in Form aforesaid made, little regarding, but contriving and fraudulently intending the same *James* in this Behalf craftily and subtilly to deceive and defraud, hath not yet paid the aforesaid several Sums of Money, or any ~~Money~~ thereof, to the same *James*, nor any Way satisfied him for the same, although the aforesaid *Samuel* afterwards, to wit, the aforesaid twelfth Day of *August*, in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, by the same *James* hath been often requested, but hitherto hath refused, and still doth refuse to pay, or any Way content him for the same. Wherefore the same *James* saith, That he is worse, and hath Damage to the Value of 60 l. And thereof he brings his Suit.

Pledges, &c.

Declaration on an Inland Bill of Exchange against the Acceptor, by Verbal Acceptance.

London, to wit, *Thomas Huckell* the younger, No Time of Payment in the Bill. complains of *Thomas Pritchard*, in Custody of the Marshal, &c. for that, to wit, That whereas on the twenty eighth Day of *June*,
in

King's Bench.

in the Year of our Lord One Thousand seven Hundred and twenty seven, at *London*, in the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*, one *Cary Weekes*, according to the Custom of Merchants, made his certain Bill of Exchange, bearing Date the same Day and Year, directed to the aforesaid *Thomas Pritchard*, and thereby required the same *Thomas Pritchard* to pay to the aforesaid *Thomas Huckell*, by the Name of *Thomas Huckell*, Junior, or Order, the Sum of fourteen Pounds, Value received, and place it to the Accompt of the same *Cary Weekes*; of which said Bill of Exchange, the aforesaid *Thomas Pritchard* afterwards, to wit, the thirtieth Day of *July*, in the Year of our Lord abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, had Notice and Sight, and then and there accepted it, according to the Tenor of the Bill aforesaid; and by Reason thereof, he the said *Thomas Pritchard*, became liable to pay to the same *Thomas Huckell*, the aforesaid fourteen Pounds in the same Bill of Exchange mentioned, according to the Tenor and Effect of the same Bill: And being so liable, the aforesaid *Thomas Pritchard* afterwards, to wit, the same Day and Year last abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof assumed upon himself, and to the same *Thomas Huckell* then and there faithfully promised, that he the said *Thomas Pritchard* would well and truly pay, and satisfy to the same *Thomas Huckell*, the same fourteen Pounds, according to the Tenor and Effect of the same Bill. And whereas also
after-

afterwards, to wit, the twenty eighth Day of ^{King's Bench.} June, in the Year of our Lord last aboveſaid, at London aforeſaid, in the Pariſh and Ward aforeſaid, the aforeſaid *Cary Weeks*, according to the aforeſaid Uſe and Cuſtom of Merchants, hath made his one other Bill of Exchange, bearing Date the ſame Day and Year, directed to the aforeſaid *Thomas Pritchard*, and hath thereby required the ſame *Thomas Pritchard* to pay to the aforeſaid *Thomas Huckell*, by the Name of *Thomas Huckell*, Junior, or Order, another Sum of fourteen Pounds, Value received, and place it to the Accompt of the ſame *Cary Weekes*; of which ſaid Bill of Exchange laſt mentioned, the aforeſaid *Thomas Pritchard* afterwards, to wit, the aforeſaid thirtieth Day of July, in the Year of our Lord aboveſaid, at London aforeſaid, in the Pariſh and Ward aforeſaid, had Notice and Sight; and the aforeſaid laſt mentioned fourteen Pounds, in the aforeſaid laſt mentioned Bill contained, then and there promiſed to pay to the ſame *Thomas Huckell*, within two Months from thence next following; and by Reaſon thereof, and by the Cuſtom of Merchants, uſed and approved of, from the Time whereof the Memory of Man is not to the contrary, the aforeſaid *Thomas Pritchard* became charged to pay to the ſame *Thomas Huckell*, the aforeſaid laſt mentioned fourteen Pounds, according to that Promiſe; and being ſo thereof charged, the aforeſaid *Thomas Pritchard* afterwards, to wit, the ſame Day and Year laſt aboveſaid, at London aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration thereof, aſſumed

Z

upon

Another Bill.

King's Bench. upon himself, and to the same *Thomas Huckell* then and there faithfully promised, that he, the said *Thomas Pritchard*, the same fourteen Pounds, to the same *Thomas Huckell* within two Months then next following, would well and truly pay and satisfy. And whereas also the aforesaid *Thomas Pritchard*, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the same *Thomas Huckell*, in other fourteen Pounds, of lawful Money of *Great Britain*, for the like Sum of Money by the aforesaid *Thomas Pritchard*, to the Use of him *Thomas Huckell*, before that Time had and received; and being so thereof indebted, the aforesaid *Thomas Pritchard* afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof assumed upon himself, and to the same *Thomas Huckell* then and there faithfully promised, that he, the aforesaid *Thomas Pritchard*, the same fourteen Pounds last mentioned, to the same *Thomas Huckell*, would well and truly pay and content, when he should be thereunto afterwards required. Nevertheless, the aforesaid *Thomas Pritchard*, his several Promises and Assumptions aforesaid not at all regarding, but contriving and fraudulently intending him *Thomas Huckell* in this Behalf craftily and subtilly to deceive and defraud, the aforesaid several Sums of Money, or any Penny thereof, to the same *Thomas Huckell*, hath not paid, or any ways contented for the same; altho' the aforesaid *Thomas Pritchard*, by him *Thomas Huckell*, on the first Day of *October*,

Money had and received.

in the Year of our Lord One Thousand seven hundred and twenty seven aboveſaid, and oftner afterwards at *London* aforeſaid, in the Pariſh and Ward aforeſaid, hath been required ſo to do; but hath hitherto altogether reſuſed, and ſtill doth reſuſe to pay him, or any ways content him for the ſame, to the Damage of him *Thomas Huckell*, thirty Pounds; and therefore brings his Suit.

Pledges of proſecuting, &c.

And the aforeſaid *Thomas Pritchard*, by *Plea*.
Thomas Hand his Attorney, comes and defends the Force and Injury when and where, and as this Court ſhall think fit, and ſaith, *Sham Plea*.
 That the aforeſaid *Thomas Huckell* ought not to have his Action aforeſaid thereof againſt him, becauſe he ſaith, that well and true it is, that he aſſumed upon himſelf, in Manner and Form, ſo as the aforeſaid *Thomas Huckell*, againſt him by his Declaration aforeſaid, above hath ſuppoſed. But the ſame *Thomas Pritchard* further ſaith, That after the making of the ſeveral Promiſes and Aſſumptions aforeſaid, above ſuppoſed to be made, to wit, on the twelfth Day of *March*, in the Year aboveſaid, he, the ſame *Thomas Pritchard*, at *London* aforeſaid, in the Pariſh of the *Bleſſed Mary of the Arches*, in the Ward of *Cheap*, gave and delivered to the aforeſaid *Thomas Huckell*, ten Hogſheads of *Claret*, in full Satisfaction and Diſcharge of the ſeveral Promiſes and Aſſumptions aforeſaid, and of all Money in the ſame mentioned; which ſaid ten Hogſheads of *Claret*, the aforeſaid *Thomas Huckell*, then and there in full Satis-

Declarations in Case.

King's Bench. *sa*ction and Discharge of the several Promises and Assumptions aforesaid, and of all Money in the same mentioned, of the same *Thomas Pritchard*, had and received; and this he is ready to justify: Wherefore he prays Judgment, if the aforesaid *Thomas Huckell*, ought to have, or maintain his Action aforesaid thereof, against him, &c.

Replication. And the aforesaid *Thomas Huckell* saith, That he, for any thing by the aforesaid *Thomas Pritchard* above, in Pleading alledged, ought not to be precluded from having his Action aforesaid thereof against him, because by protesting that the aforesaid *Thomas Pritchard* hath not given, or delivered to the same *Thomas Huckell*, the aforesaid ten Hogsheads of Claret, in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid, and of all Money in the same mentioned, in Manner and Form as the aforesaid *Thomas Pritchard* above in Pleading hath alledged. For Plea, the same *Thomas Huckell* saith, That he, the aforesaid *Thomas Huckell* hath not had or received, of the same *Thomas Pritchard*, the aforesaid ten Hogsheads of Claret, in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid, and of all the Money in the same mentioned, in Manner and Form, so as the aforesaid *Thomas Pritchard* thereof in Pleading hath alledged; and prays that this may be enquired by the Country; and the aforesaid *Thomas Pritchard* thereof likewise, &c. Therefore let a Jury come thereupon before the Lord the King at *Westminster*, on *Wednesday* next after three Weeks of Saint *Michael*; And

And who neither, &c. to recognize, &c. King's Bench.
because as well, &c. the same Day is given to
the Parties aforefaid there, &c.

*Declaration for not delivering of
Loading.*

London, to wit, *Samuel Ximenes*, complains
of *John Moram*, in Custody of the Marshal,
&c. for that to wit, that whereas the afore-
said *John Moram*, on the ninth Day of *Sep-*
tember, in the Year of our Lord One Thou-
sand seven Hundred and twenty eight, at
Lisbon, in Parts beyond the Seas, had received
in, and upon a certain Ship, called the *Sarah*,
whereof the aforefaid *John Moram* was then
Master, bound on a Voyage from *Lisbon*
aforefaid, to *Amsterdam*, in good Order and
well conditioned, diverse Goods and Mer-
chandizes of him *Samuel*, to wit, three Bags,
containing in them three hundred and twenty
five Pieces of Gold, called *Moidores*, to the
Value of four hundred forty and six Pound,
of lawful Money of this Kingdom, to be trans-
ported by him *John*, in the Ship aforefaid,
from *Lisbon* aforefaid, unto *Amsterdam*, and
to the aforefaid *Samuel*, or his Assigns, to
be there delivered, for a certain Hire by the
aforefaid *Samuel*, to the same *John*, to be paid
thereupon; he, the aforefaid *John*, in Con-
sideration thereof afterwards, to wit, the
same Day and Year abovefaid, at *Londo:*
aforefaid, to wit, in the Parish of the *Blessed*
Mary of the Arches, in the Ward of *Cheap*,
assumed upon himself, and then and there
faithfully promised the same *Samuel*, that he,

King's Bench.

the aforesaid *John*, would carry and transport for the same *Samuel*, the Goods and Merchandizes aforesaid, from *Lisbon* aforesaid, to *Amsterdam* aforesaid; and the same Goods and Merchandizes to the same *Samuel*, or his Assigns at *Amsterdam* aforesaid, would safely and securely deliver, (the Dangers of the Seas only excepted.) And the same *Samuel* avers, That he, the aforesaid *John*, after making his Promises and Assumptions aforesaid, to wit, on the ninth Day of *October*, in the Year of our Lord last aforesaid, at *Amsterdam* aforesaid, from *Lisbon* aforesaid, safely arrived with the three Bags aforesaid, and with the aforesaid three Hundred and twenty five Pieces of Gold. And although the same *Samuel*, from the Time of making his Promises and Assumptions aforesaid, was always ready, and still is ready to pay to the same *John*, the Hire agreed between them, for the transporting of the Goods and Merchandizes aforesaid, nevertheless the aforesaid *John*, his Promises and Assumptions aforesaid, in Form aforesaid made, not regarding, but contriving and fraudulently intending the same *Samuel*, in this Behalf, craftily and subtilly to deceive and defraud, hath not delivered the aforesaid Bags, and the aforesaid three Hundred and twenty five Pieces of Gold, called Moidores, or any Part thereof, to the same *Samuel*, according to his Promises and Assumptions aforesaid, although the same *John* afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, by the same *Samuel* was required so to do; but he hath hitherto

Declarations in Case.

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hitherto altogether refused, and still doth refuse to deliver them to the same *Samuel*: Wherefore the same *Samuel* saith, that he is the worse, and hath Damage to the Value of nine Hundred Pounds; and therefore brings his Suit, &c.

King's Bench.

Pledges of prosecuting, &c.

Against a Warehouse Keeper, for Goods lost.

London, to wit, *Joseph Parry* complains of *Daniel Davies*, and *James Powell*, in the Custody of the Marthal, &c. for that, to wit, that whereas the aforesaid *Daniel* and *James*, on the first Day of *February*, in the fourth Year of the Reign of the Lord *George*, now King of *Great Britain*, &c. at *London*, in the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*, (in Consideration that the same *Joseph*, at the special Instance and Request of them *Daniel* and *James*, before that Time had delivered to the same *Daniel* and *James*, diverse Goods, Wares and Merchandizes of him *Joseph*, to the Value of forty Pounds, by them *Daniel* and *James* to be sold and disposed of, for him *Joseph*, and to give and deliver a true Account of the same Goods, Wares and Merchandizes, and also of the Profit of them, to the aforesaid *Joseph*,) assumed upon themselves, and then and there faithfully promised the same *Joseph*, that they, the aforesaid *Daniel* and *James*, would well and truly give and deliver to him, the aforesaid *Joseph*, a true Account

King's Bench. of the same Goods, Wares, and Merchandizes, or the Produce of the same, when thereto afterwards they should be required. And although the same *Daniel* and *James* afterwards, to wit, the same Day and Year abovesaid, had sold the same Goods, Wares, and Merchandizes, and disposed of the same, and thereof made great Profit: Nevertheless, the same *Daniel* and *James*, their Promises and Assumptions aforesaid, no way regarding, but contriving, and fraudulently intending the same *Joseph*, in this Behalf, craftily and subtilly to deceive and defraud, have not at any Time hitherto, to the same *Joseph*, given or delivered, nor hath either of them given or delivered any true Account of the same Goods, Wares, and Merchandizes, or of the Produce of them, (although the aforesaid *Daniel* and *James* afterwards, to wit, on the second Day of *February*, in the Year abovesaid, and oftner afterwards by the same *Joseph* at *London* aforesaid, in the Parish and Ward aforesaid, were required so to do,) but they have hitherto absolutely refused, and still do refuse to give or deliver that Account to the aforesaid *Joseph*. And whereas the aforesaid *Daniel* and *James* afterwards, to wit, on the third Day of *February*, in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, (in Consideration that the aforesaid *Joseph*, at the like Instance and Request of them *Daniel* and *James*, had before then delivered to the same *Daniel* and *James*, five Pieces of Woollen Cloth, to the Value of other forty Pounds,) assumed upon themselves, and then and there faithfully promised the

the same *Joseph*, that they, the aforesaid *Daniel* and *James*, would well and truly deliver to the same *Joseph*, the same five Pieces of Woollen Cloth, or the Value thereof, when they should be thereto afterwards required, to the same *Joseph* would well and faithfully pay and satisfy. Yet the aforesaid *Daniel* and *James*, their Promise and Assumption last mentioned not regarding, but contriving and fraudulently intending the same *Joseph* in this Behalf craftily and subtilly to deceive and defraud, have not at any Time hitherto delivered, nor hath either of them delivered to the same *Joseph*, the aforesaid five Pieces of Woollen Cloth, nor have hitherto paid, or hath either of them paid to the same *Joseph* the Value thereof, (although the same *Daniel* and *James* afterwards, to wit, on the fourth Day of *February*, in the fifth Year above said, and oftner afterwards, by the same *Joseph*, at *London* aforesaid, in the Parish and Ward aforesaid, were required to deliver the same five Pieces of Woollen Cloth, or to pay the Value thereof,) but they have hitherto entirely refused, and still do refuse to deliver to the same *Joseph*, the aforesaid five Pieces of Woollen Cloth, or to pay to the same *Joseph* the Value thereof. And whereas also the aforesaid *Daniel* and *James* afterwards, to wit, on the first Day of *May*, in the fifth Year above said, at *London* aforesaid, in the Parish and Ward aforesaid, were indebted to the same *Joseph* in other forty Pounds of like Money, for the like Sum of Money by them *Daniel* and *James*, to the Use of him *Joseph*, before that Time had and received; and being

King's Bench

Money had received.

King's Bench. being so thereof indebted, they the same *Daniel* and *James*, in Consideration thereof afterwards, to wit, the Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, assumed upon themselves, and then and there faithfully promised the same *Joseph*, that they, the aforesaid *Daniel* and *James*, would well and faithfully pay, and content to the same *Joseph*, the same forty Pounds last aforesaid, when they should be thereof afterwards requested: Yet the aforesaid *Daniel* and *James* no way regarding their Promises and Assumptions aforesaid, in Form aforesaid made, but contriving, and fraudulently intending the same *Joseph* in this Behalf, craftily and subtilly to deceive and defraud, have not paid, nor hath either of them paid to the same *Joseph*, the aforesaid Sum of Money, or any Part thereof, (although the same *Daniel* and *James* afterwards, to wit, on the third Day of *May*, in the sixth Year aforesaid, and oftner afterwards, by the same *Joseph*, at *London* aforesaid, in the Parish and Ward aforesaid, were required so to do.) But they have hitherto, &c.

For not taking South-Sea Stock sold.

London, to wit, *B J*, complains of *J M*, in Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid *Jacob*, on the sixth Day of *September*, in the sixth Year of the Reign of the Lord the now King, at *London* aforesaid, to wit, in the
Parish

Parish of *St. Peter the Poor*, in the Ward of *King's Bench*.
Broad-Street, London, in Consideration that the *It would be ne-*
aforesaid *Benjamin*, at the special Instance *cessary to lay*
and Request of the same *Benjamin*, had taken *the Venue in*
upon himself, and the same Day and Year *the Parish*
there faithfully promised the same *Jacob*, to *where the*
Transfer One Thousand Pounds Capital *S. S. House*
Stock of the Governour and Company of *is, by Reason of*
Merchants of *Great Britain*, Trading to the *some Avenues*
South-Seas, and other Parts of *America*, and *afterwards to*
for encouraging the Fishery, called *South-Sea*-*ferent Rooms,*
Stock, upon the twenty first Day of *September* *and Part of*
then next following, assumed upon himself, *the House is in*
and then and there faithfully promised the *one Parish, and*
same *Benjamin*, to pay to the same *Benjamin*, *Part in ano-*
734 *l.* for every Hundred Pounds Capital *ther; let Care*
Stock aforesaid, upon the Transfer of the same *be taken that*
One Thousand Pounds Capital Stock aforesaid. *it be in the*
And the aforesaid *Benjamin* avers, that *Parish in which*
Capital Stock from the Time of making that *the Rooms*
Assumption and Promise, was hitherto used to *where the*
be transferred by the next Governour and *Transfer-Books*
Company aforesaid, in the Transfer Books *were kept.*
of the Governours and Company aforesaid,
with the Intent, and to that Purpose, being
kept in a certain Room here, in the Parish
and Ward, Part of a certain House, called
the *South-Sea House*, when those Books were
open; and that the Books aforesaid, were
open in the Room aforesaid in that House,
on the said twenty first Day of *September*, in
the Year aforesaid, to wit, at Nine of the
Clock in the Forenoon of the same Day,
and from thence until One of the Clock in
the Afternoon of the same Day, at which
Time those Books were there shut up. And
that

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that the aforesaid *Benjamin*, on the same twenty first Day of *September*, immediately before the Time in which the Books aforesaid, were so as aforesaid shut up, and for a convenient Time, to wit, for the Space of four Hours, before the Time of shutting up thereof, in the Room aforesaid, in the House aforesaid, offered to transfer to the same *Jacob*, the same One Thousand Pounds, Capital Stock, and then and there requested the same *Jacob*, to accept the same One Thousand Pounds Capital Stock aforesaid; but the aforesaid *Jacob*, or any Person on his Behalf, did not accept, nor was ready to accept the same One Thousand Pounds, Capital Stock aforesaid. And whereas also the aforesaid *Jacob* afterwards, to wit, on the said sixth Day of *September*, in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the same *Benjamin*, in other Seven Hundred and thirty four Pounds, of like lawful Money of this Kingdom, for Goods and Chattels, by him *Benjamin*, to the same *Jacob*, and at the like Instance and Request of the same *Jacob*, before then sold and delivered. And being so thereof indebted, the same *Jacob*, in Consideration thereof afterwards, to wit, the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, assumed upon himself, and then and there faithfully promised the same *Benjamin*, to pay him the same last mentioned Sum, when he should be afterwards thereto required. Yet the aforesaid *Jacob* no way regarding his several Promises and Assumpti-

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ons aforesaid, in Form aforesaid made, but King's Bench.
contriving and fraudulently intending to deceive and defraud the same *Benjamin*, craftily and subtilly in this Behalf, hath not paid, or caused to be paid to the same *Benjamin*, the aforesaid several Sums of Money, or any Money thereof, (although the same *Jacob* afterwards, to wit, the same twenty first Day of *September*, in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, by the same *Benjamin* had been requested so to do; but hath hitherto absolutely refused, and still doth refuse to pay the same to him, to the Damage of him *Benjamin*, Eight Thousand Pounds, and thereupon he brings his Suit.

For living in a House upon Sufferance.

Huntingdon, to wit; *R H*, Gentleman, complains of *W B*, in Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid *William*, on the twenty ninth Day of *September*, in the Year of our Lord One thousand seven hundred and thirty one, at *St. Neots*, in the County of *Huntingdon* aforesaid, in Consideration that the aforesaid *R H* would suffer the aforesaid *William* to have, enjoy, and occupy one Messuage, with the Appurtenances of him *Richard*, situate and being in *St. Neots* in the County aforesaid, for a long time then next following, to wit, so long as both Parties should please, assumed upon himself, and then and there faithfully promised the same *Richard* to pay him so much Money, as he thereupon should reasonably deserve.
And

King's Bench. And the same *R* avers, That he believing (or relying on) that Promise and Assumption of him *William*, he the same *Richard* permitted him *William*, at the said Instance of him *William*, to have, enjoy, and occupy: And that the same *William*, on that Permission of him *Richard*, had enjoyed and occupied the Premises aforesaid, with the Appurtenances, from thence, to wit, from the Feast of Saint *Michael* the Arch-angel, in the Year above-said, until to and in the Feast of Saint *John* the Baptist, in the Year of our Lord One thousand seven hundred and thirty two, and that he the said *R* avers that he therefore reasonably deserved to have of the aforesaid *William* seven pounds and ten shillings, to wit, at St. *Neots* aforesaid, in the County aforesaid, whereof the aforesaid *William*, afterwards, to wit, on the twenty sixth Day of *June*, in the Year last above-said, had Notice. And whereas also the aforesaid *William* afterwards, to wit, the said twenty sixth Day of *June*, in the Year of our Lord One thousand seven hundred and thirty two, above-said, at St. *Neots* aforesaid, in the County aforesaid, in Consideration that the aforesaid *Richard*, at the like special Instance and Request of him *William*, had permitted him *William* to have, enjoy, and occupy one Messuage, and the benefit of one other Messuage, with the Appurtenances of him *Richard*, situate and being in St. *Neots* aforesaid, in the County aforesaid, for a long time, to wit, from the aforesaid Feast of St. *Michael* the Archangel, in the Year of our Lord

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One thousand seven hundred and thirty one, ^{King's Bench.} until, to, and in, the aforesaid Feast of Saint *John* the Baptist, in the Year of our Lord One thousand seven hundred and thirty two, assumed upon himself, and then and there faithfully promised the same *Richard* to pay him thereupon other seven pounds and ten Shillings, when he should be thereunto afterwards requested. And whereas also, the aforesaid *William* afterwards, to wit, the said twenty sixth Day of *June*, in the Year of our Lord, One thousand seven hundred and thirty two, above-said, at *St. Neots* aforesaid, in the County aforesaid, in Consideration that the aforesaid *R*, at the like Instance and request of him *William*, had permitted him *William* to have, enjoy, and occupy the Use and Benefit of one other Messuage, with the Appurtenances of him *Richard*, situate and being at *St. Neots* aforesaid, in the County aforesaid, for a long Time, to wit, for the space of three quarters of a Year, then last past, assumed upon himself, and then and there faithfully promised the same *Richard* to pay him so much Money as he reasonably deserved to have therefore. And the same *Richard* avers, that he therefore reasonably deserved to have of the same *William* other seven pounds and ten shillings, to wit, at *St. Neots* aforesaid, in the County aforesaid, whereof the aforesaid *William* afterwards, to wit, the same Day and Year last above-said, had Notice. Yet the aforesaid *William*, no way regarding his several Promises and Assumptions aforesaid, but contriving, and fraudulently intending the

Declarations in Case.

King's Bench. the same *Richard*, in this Behalf, craftily and subtilly to deceive and defraud, hath not as yet paid to the same *Richard*, the aforesaid several Sums of Money, or any Penny thereof (altho' the aforesaid *William*, afterwards, to wit, the same Day and Year last aforesaid, and oftner afterwards, at St. *Neots* aforesaid, in the County aforesaid, by him *Richard* had been requested so to do, but he hath hitherto absolutely refused, and still doth refuse to pay the same to him, to the Damage of him *Richard* twenty pounds; and therefore he brings his Suit, &c.

*Pledges, &c.**Against a High Bailiff, for a false Return.*

York, to wit, *FP*, Gentleman, complains of *WS*, Gentleman, High Bailiff of the Honour of *Pontefract*, in the County of *York* aforesaid, in Custody of the Marshal, &c. for that, to wit, That whereas the same *F*, lately, to wit, in the Term of the *Holy Trinity*, in the sixth Year of the Reign of the Lord the now King, in the Court of the same Lord the King, before the King himself, (the same Court at *Westminster*, in the County of *Middlesex* then being) by the Judgment of the same Court, had recovered against one *RS*, twenty Pounds of Debt, and also forty Shillings for his Damages, which he had sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended; whereof the aforesaid *Richard* was convicted,

as by the Record and Proceſs thereof, in the King's Bench Court of the ſaid Lord the now King, before the King himſelf at *Westminster* aforeſaid remaining, manifeſtly appears. And whereas alſo the aforeſaid *F*, for obtaining the Debt and Damages aforeſaid, of, and upon the Judgment aforeſaid, afterwards, to wit, the fifteenth Day of *May*, in the ſixth Year of the Reign of the Lord the now King, before the King himſelf, (the ſame Court then alſo being at *Westminster*, in the County of *Middleſex* aforeſaid,) there iſſued out of the ſame Court of the ſaid Lord the King, before the King himſelf, a certain Writ of *Latitat*, againſt the aforeſaid *R*, to the Sheriff of *York* directed, by which ſaid Writ, the ſame Lord the now King, commanded the ſame then Sheriff of *York*, that he ſhould take the aforeſaid *R*, if he could be found in his Bailiwick, and ſhould keep him ſafe, ſo that he might have his Body before the ſaid Lord the King at *Westminster*, on *Monday* next, after fifteen Days of *St. Martin*, then next following, to answer to the ſame *F*, of a Plea of Treſpaſs; and alſo to the Bill of him *F*, againſt the aforeſaid *F*, for 22 *l.* of Debt, according to the Cuſtom of the Court of him the Lord the King, before the King himſelf to be exhibited. Which ſaid then Sheriff of *York*, to wit, *FG*, Eſq; afterwards, and before the Return of that Writ, to wit, the tenth Day of *July*, in the ſixth Year aforeſaid, at *Leeds*, in the County of *York* aforeſaid, ordered the Execution of the ſame Writ to be delivered to him the aforeſaid *WS*, then, and always afterwards,

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King's Bench.

hitherto High Bailiff of the Liberty of the Honour of *Pontefract*, in the County of *York* aforesaid; which said High Bailiff then had, and still hath full Execution and Return of all Writs and Executions within the same Liberty, and the Execution of the Writ aforesaid wholly belonged to him to do: For that the Execution thereof within that Liberty, in the Bailiwick aforesaid, by him the Sheriff, could not be done, by Virtue of which said Command to the aforesaid *W S* afterwards, and before the Return of that Writ, to wit, on the nineteenth Day of *September*, in the fifth Year above said, at *Leeds* aforesaid, within his Liberty aforesaid, took and arrested the aforesaid *R S*, and him then and there had, and detained in Prison under his Custody, by Reason of the Arrest aforesaid; and the aforesaid *R*, so being as aforesaid in Prison, under the Custody of the aforesaid *W S*, Bailiff of the Liberty aforesaid, he, the same *W S*, in no wise regarding his said Office, but contriving, and fraudulently intending him *F*, in this Behalf unjustly to surcharge, and him *F*, to hinder, and wholly deprive of the obtaining of his Debt and Damages aforesaid, afterwards, to wit, on the twenty third Day of *September*, in the fifth Year above said, at *Leeds* aforesaid, permitted the aforesaid *Richard* to go and escape out of his Custody at large, where the aforesaid *R* would, without the Consent, and against the Will of him *F*, the same *F* of the Debt and Damages aforesaid owing of, and upon the Judgment aforesaid, or any Part thereof, then, or still, not being paid or satisfied.

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atisfied. And at the aforesaid *Monday* next King's Bench. after fifteen Days of *St. Martin*, the aforesaid *WS*, falsely and fraudulently returned to the same *JG*, then being Sheriff of the County of *York* aforesaid; which said Return of *WS*, by the same *JG*, then Sheriff of the County of *York* aforesaid, as is reported, being upon the Writ of *Latitat* aforesaid, at the Day of that Return, to wit, on the aforesaid *Monday* next after fifteen Days of *St. Martin*, was sent and certified to the Lord the King at *Westminster*, that he, the same *WS*, High Bailiff of the Liberty aforesaid, had taken the Body of the aforesaid *RS*, whose Body he had ready before the said Lord the King, at the aforesaid Day and Place, in the same Writ contained, as by the same Writ is commanded; when in Truth, the aforesaid *WS*, then High Bailiff of the Liberty aforesaid being, had not the Body of the aforesaid *R*, before the said Lord the King, at the aforesaid Day and Place in the Writ aforesaid contained, by which the same *F* is not only deprived of his Remedy for the obtaining of the Debt and Damages aforesaid, against the aforesaid *R*, who always after the Escape aforesaid, in a Place unknown to the aforesaid *F*, hath been hiding and skulking. But also the same *F*, his Debt and Damages aforesaid, of, and upon his Judgment aforesaid, so as aforesaid recovered, hath totally lost, to the Damage of him *F*, forty Pounds; and therefore brings his Suit, &c.

Declarations in Case:

Upon a Treaty, or Discourse, and Promise thereon.

Cornwall, to wit, *EN*, complains of *JN* Esq; in Custody of the Marshal, &c. for that, to wit, That whereas on the thirtieth Day of *April*, in the fifth Year of the Reign of the Lord the now King, at *Launceston*, in the County aforesaid, a certain Discourse was moved, and had between her *Elizabeth* and the aforesaid *John*, concerning a common Recovery suffered by *Erisey Nicholls* Gentleman, Brother of the aforesaid *John*, in the Court of the Lord the now King, of the Bench at *Westminster*, in the County of *Middlesex*, as of *Michaelmas* Term, in the first Year of his Reign, of the Manours of *Fretthen*, &c. in the County of *Cornwall* aforesaid, and the Question, or Doubt between them was, Whether the aforesaid *Erisey Nicholls*, at the Time of the suffering the common Recovery aforesaid, was of the Age of One and twenty Years, or under that Age; and upon the Discourse aforesaid, the same *Elizabeth* hath asserted, that the aforesaid *Erisey*, at the Time of suffering the common Recovery aforesaid, was of the Age of One and twenty Years; which said Assertion of her *Elizabeth*, the aforesaid *John* then and there utterly denied saying, That the aforesaid *Erisey*, at the Time of suffering the common Recovery aforesaid, was not of the Age of One and twenty Years, but under that Age; and there

thereupon the aforesaid *John*, the aforesaid *King's Bench*.
twenty first Day of *April*, in the fifth Year
abovesaid, at *Launceston* aforesaid, in Consi-
deration that the same *Elizabeth*, at the spe-
cial Instance and Request of the aforesaid
John, then, and there had paid into the
Hands of the aforesaid *John*, ten Shillings,
assumed upon himself, and then and there
faithfully promised the same *Elizabeth*, that
he, the aforesaid *John*, would pay to the
aforesaid *Elizabeth* five Pounds, if the afore-
said *Erisey Nicholls*, at the Time of suffer-
ing the common Recovery aforesaid, was of
the Age of One and twenty Years: And
the same *Elizabeth* avers, that the aforesaid
Erisey Nicholls, at the Time of the suffering
the common Recovery aforesaid, was of the
Age of Twenty one Years; Nevertheless the
aforesaid *John*, not at all regarding his Pro-
mise and Assumption aforesaid, but contri-
ving, and fraudulently intending her *Eliza-
beth*, in this Behalf, craftily and subtilly to
deceive and defraud, hath not paid the a-
foresaid five Pounds, or any Penny thereof,
to the same *Elizabeth*, although often re-
quested, to wit, (such a Day and Place,) or
for the same any ways contented her, but
hitherto hath altogether refused, and still
doth refuse to pay the same to her, to the
Damage of her *Elizabeth*, ten Pounds; and
therefore she brings her Suit, &c.

Declarations in Case.

*Declaration, at the Suit of an Executor,
for Goods Sold and Delivered; and
upon two Notes.*

Middlesex, to wit, *H B* Gentleman, Executor of the last Will and Testament of *I B* deceased, complains of *Samuel M*, in Custody of the Marshal of the *Marshalsea*, of the Lord the King, before the King himself, being for that, to wit that, Whereas the aforesaid *Samuel*, in the Life-time of the aforesaid *I*, to wit, on the first Day of *November*, in the Year of our Lord One Thousand seven Hundred and thirty, at *Westminster* in the County of *Middlesex*, had been indebted to the same *I*, in ten Pounds of lawful Money of *Great-Britain*, for diverse Goods, Wares, and Merchandizes, to the same *S*, by the same *I*, at the special Instance and Request of him *S*, before that Time sold and delivered; and being so thereof indebted, he, the aforesaid *S*, in Consideration thereof afterwards, to wit, the same Day and Year at *Westminster*, in the County aforesaid, assumed upon himself, and then and there faithfully promised the same *I* in his Life-time, that he, the aforesaid *S*, would well and truly pay, and content the aforesaid ten Pounds to the same *I*, when thereto afterwards he should be required. And whereas also the aforesaid *S*, in the Life-time of the aforesaid *I*, to wit, the Day and Year abovesaid, at *Westminster* aforesaid, in the County aforesaid, in Consideration that the same *I*, at the like Instance

and

and Request of him *S*, had sold and delivered to the aforesaid *S*, diverse other Goods, Wares, and Merchandizes, assumed upon himself, and then and there faithfully promised the same *I*, that he, the same *S*, would well and truly pay, and content the same *S*, so much Money as the Goods, Wares, and Merchandizes last mentioned, were reasonably worth, at the Time of the Sale and Delivery of the same, when thereof afterwards he should be requested. And the same *H*avers, That the Goods, Wares, and Merchandizes last mentioned, at the Time of the Sale and Delivery of the same, were reasonably worth other ten Pounds, of like lawful Money of *Great Britain*, whereof the same *S* afterwards, to wit, the same Day and Year last mentioned, and often afterwards, at *Westminster* aforesaid, in the County aforesaid, had Notice. And whereas also the aforesaid *S* afterwards, in the Life-time of the aforesaid *I*, to wit, the second Day of *November*, in the Year above said, at *Westminster* aforesaid, in the County aforesaid, accompted together with the same *I*, of, and concerning diverse other Sums of Money to the same *I*, by the aforesaid *S*, before that Time due, and then being in Arrear, and unpaid : And upon that Account, the aforesaid *S*, then and there was found in Arrear towards the aforesaid *I*, in 8 *l.* 15 *s.* 0 *d.* of like lawful Money ; and being so thereof found in Arrear, the aforesaid *S*, in Consideration thereof, afterwards, to wit, the same Day and Year last mentioned, at *Westminster* aforesaid, in the County aforesaid, assumed upon himself, and

King's Bench. then and there faithfully promised the same *I*, that he, the aforesaid *S*, would well and truly pay and content to the same *I*, the aforesaid 8 *l.* 15 *s.* last mentioned, when he should be afterwards thereof requested. And whereas also the aforesaid *S* afterwards, and after the Death of the aforesaid *I*, to wit, the twelfth Day of *August*, in the Year of our Lord One Thousand seven Hundred and thirty one, at *Westminster* aforesaid, in the County aforesaid, accompted together with the aforesaid *H*, as Executor of the last Will and Testament of the aforesaid *I*, of, and concerning diverse other Sums of Money to the said *John* in his Life-time, and to the same *H* as his Executor, after the Death of the aforesaid *I*, and before that Time due, and to the same *H*, as Executor in Form aforesaid, then being due and unpaid; and upon that Account the aforesaid *S*, then and there was found in Arrear towards the aforesaid *H*, as Executor of the said *I*, in another Sum of eight Pounds fifteen Shillings, of like lawful Money; and being so thereof in Arrear, the aforesaid *S* in Consideration thereof afterwards, to wit, the same Day and Year last mentioned, at *Westminster* aforesaid, in the County aforesaid, assumed upon himself, and then and there faithfully promised the same *H*, as Executor aforesaid, to pay to him the same last mentioned Sum of Money, when he should be thereunto afterwards requested by the said *H*. And whereas also the aforesaid *S* afterwards, and after the first Day of *May*, in the Year of our Lord One Thousand seven Hundred and five, to wit, the twelfth Day of *August* abovesaid, at *Westminster* aforesaid, in the

the County aforesaid, made his certain Note in Writing, subscribed with his proper Hand, bearing Date the same Day and Year last mentioned, and the same Note to the said *H*, as Executor, in Form aforesaid delivered, and by the same Note promised to pay to the aforesaid *H*, as Executor, in Form aforesaid, or Order, another Sum of eight Pounds fifteen Shillings, upon the twenty third Day of *October* then next following; and by Reason thereof, and also by Force of the Statute in the like Case made and provided, the said *S* became chargeable to pay to the same *H*, as Executor, in Form aforesaid, or Order, the same Sum of Money, according to the Tenor of that Note; and being so chargeable, the aforesaid *S*, in Consideration thereof, afterwards, to wit, the same Day and Year at *Westminster* aforesaid, in the County aforesaid, assumed upon himself, and then and there promised the same *H*, as Executor in Form aforesaid, to pay him the said last mentioned Sum of Money: Nevertheless, the aforesaid *S*, not at all minding his several Promises and Assumptions aforesaid, but contriving, and fraudulently intending him *I*, in his Life-time, and the aforesaid *H*, after the Death of him *I*, craftily and subtilly to deceive and defraud, hath not paid the aforesaid several Sums of Money in the first, second, and third Promises aforesaid mentioned, or any Penny thereof, to the aforesaid *I* in his Life-time, or the same Sums of Money to the same *H*, after the Death of him *I*; or the aforesaid other Sums in the other Promises aforesaid specified,

King's Bench.
Promissory
Note.

Declarations in Case.

King's Bench.

fied, or any Penny thereof to the same *H*, after the Death of him *I*, (although the aforesaid *S*, by the aforesaid *I*, in his Life-time, to wit, the third Day of *November*, in the Year of our Lord One Thousand seven Hundred and thirty one abovesaid, and by the same *H*, as Executor in Form aforesaid, after the Death of him *I*, to wit, the twenty fourth Day of *October*, in the Year of our Lord One Thousand seven Hundred and thirty two abovesaid, had been requested so to do.) Wherefore the same *H* saith, That he is the worse, and hath Damage to the Value of sixty Pounds, and therefore brings his Suit. And the same *H* brings here into Court, the Letters Testamentary of the aforesaid *I*, by which it sufficiently appears to the Court here, him *H*, to be the Executor of the Testament aforesaid, and thereof to have the Execution, &c.

*For Coachmakers Work, and Materials
found against an Executor, at the
Suit of Executors.*

Issue. *Middlesex*, to wit, Be it remembered, that otherwise, to wit, in the Term of the *Holy Trinity*, in the sixth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. before the Lord the King at *Westminster*, came *P A* Widow, *E A*, and *R R*, Gentlemen, Executors of the last Will and Testament of *S A* deceased, by *James Croston* their Attorney, and exhibited into the Court of the said Lord the King then there, their certain Bill against *H F* Esq; Executor
of

of the last Will and Testament of *J B Esq;* in Custody of the Marshal, &c. of a Plea of Trespass upon the Case, and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *Middlesex*, to wit, *P A Widow*, *E A*, and *R R*, Gentlemen, Executors of the last Will and Testament of *S A*, deceased, complain of *H F*, Executor of the last Will and Testament of *J B*, Esq; deceased, in Custody of the Marshal, of the *Marshalsea* of the Lord the King, before the King himself, being for that, to wit that, Whereas the aforesaid *J* in his Life-time, to wit, on the first Day of *April*, in the sixth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. at the Parish of *St. Clement Danes*, in the County aforesaid, had been indebted to the aforesaid *S* in his Life-time, in twenty six Pounds of lawful Money of *Great Britain*, for Coachmakers Work, by the aforesaid *S* in his Life-time, at the special Instance and Request of the aforesaid *J* in his Life-time, before then done and performed, and for diverse necessary Things and Materials in and about the Work aforesaid used and employed; and by the aforesaid *S*, at the like Instance and Request of the aforesaid *J*, before that Time found and provided; and also for diverse Wheels, and diverse other Goods of him *S*, by the aforesaid *S* in his Life-time, to the aforesaid *J* in his Life-time, and at his like Instance before that Time sold and delivered: And being so thereof indebted, the aforesaid *J* in his Life-time, in Consideration thereof, afterwards,

King's Bench,

wards, to wit, the same Day and Year above-said, at the Parish above-said, in the County above-said, did assume upon himself, and then and there faithfully promised the same S in his Life-time, to pay him that same Sum of Money, upon the first Day of *May*, from thence next following. And whereas also the above-said S in his Life-time afterwards, to wit, the Day and Year above-said, at the Parish above-said, had made and performed diverse other Coachmakers Works for the above-said J, and at his like Instance and Request in his Life-time, and had found and provided for the above-said J in his Life-time, other Things necessary, and Materials in and about those Works used and employed, and also had sold and delivered diverse other Wheels of him S, to the above-said J in his Life-time, the above-said J in his Life-time, in Consideration thereof afterwards, to wit, the same Day and Year above-said, at the Parish above-said, in the County above-said, did assume upon himself, and then and there faithfully promised the above-said S in his Life-time, to pay him so much Money as he thereupon reasonably deserved to have : And the said *PA*, *EA*, and *RR*, aver, that the above-said S in his Life-time, thereupon reasonably deserved to have from the said J in his Life-time, another Sum of 26 *l.* of like lawful Money of *Great Britain*, whereof the above-said J in his Life-time afterwards, to wit, the same Day and Year above-said, at the Parish above-said, from the said S in his Life-time, had then and there Notice. Notwithstanding, the above-said J in his Life-time,

time, and the aforesaid *HF*, after the Death ^{King's Bench} of him *J B*, not at all caring for the several Promises and Assumptions of the aforesaid *J B*, the aforesaid several Sums of Money, or any Penny thereof, to the aforesaid *S* in his Life-time, or to the same *P E*, and *R*, or any of them, after the Death of the aforesaid *S*, have not paid, nor hath either of them paid, nor for the same any way contented, although the aforesaid *J B* in his Life-time, and the aforesaid *HF*, after the Death of the aforesaid *J B*, by the aforesaid *S*, in his Life-time, and by them the said *PAE*, and *R*, after the Death of the aforesaid *S*, were thereto likewise required to do this; but they have not paid, nor hath either of them paid the same, to the aforesaid *S* in his Life-time, or to them *P E* and *R*, or any of them, after the Death of the aforesaid *S*; but they have hitherto absolutely refused to pay, or any way content for the same, the aforesaid *S* in his Life-time, and them *P E* and *R*, after the Death of the aforesaid *S*; and the aforesaid *H* still refuses to pay the same, to the Damage of them *P E* and *R*, 40 *l.* and in Delay of the Execution of the Will aforesaid, and thereof bring their Suit. And they bring here into Court, the Letters Testamentary of the aforesaid *S*, by which it sufficiently appears to the Court here, them *P E*, and *R*, to be the Executors of the Will aforesaid; and thereof to have Administration, &c.

King's Bench. *For Bricklayers Work, and Materials found.*

Middlesex, to wit, *H A* complains of *B P*, in Custody of the Marshal of the *Marshalsea* of the Lord the King, before the King himself; being for that, to wit, that whereas the aforesaid *H*, on the first Day of *December*, in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great-Britain*, &c. at *Islington*, in the County of *Middlesex* aforesaid, exercising the Trade of a Bricklayer, at the special Instance and Request of the aforesaid *B*, had made and performed for the same *B*, divers Works relating to the Trade of him *H*; and also, at the like special Instance and Request of him *B*, had bought and provided for the same *B*, at the proper Costs and Charges of him *H*, divers Necessaries and Materials used and laid out in and about the Performance of the Work aforesaid, the aforesaid *B*, in Consideration thereof afterwards, to wit, the same Day and Year, at *Islington* aforesaid, did assume upon himself, and then and there faithfully promised the same *H*, that he the aforesaid *B* would pay to the same *H*, not only all such Sums of Money as he the same *H* hath reasonably deserved to have for the Necessaries and Materials aforesaid, so as aforesaid bought and provided by him *H*, and in and about the Performance of the Work aforesaid, so as aforesaid used and laid out; but also all such Sums of Money as he the same *H*, for his Work and Labour aforesaid, reasonably deserved to have. And
the

the aforesaid *H* avers, That he the same *H*, ^{King's Bench.} the same first Day of *December*, in the fifth Year above said, at *Islington* aforesaid, in the County aforesaid, reasonably deserved to have of the same *B* 40 *l.* of lawful Money of this Kingdom, for the Performance of the Work aforesaid; and also 50 *l.* of like Money for the Necessaries and Materials aforesaid, so as aforesaid by him *H* bought and provided, and in and about the Performance of the Work aforesaid used and laid out, whereof the aforesaid *B* then and there had Notice. And whereas the aforesaid *B* afterwards, to wit, the same Day and Year above said, at *Islington* aforesaid, in the County aforesaid, in Consideration that the aforesaid *H*, at the like special Instance and Request of him *B*, before then had caused to be performed for the same *B*, diverse other Works relating to the Trade of a Plaisterer, a Tiler, and other Trades and Labours, in and about the Amending, Repairing, and Cleansing divers Messuages and Tenements of him *B*, did likewise assume upon himself, and then and there likewise faithfully promised the same *H*, that he the same *B* would well and truly pay and satisfy to the same *H*, so much Money for the several Works and Labours last aforesaid, so as is aforesaid last mentioned to have been performed, as he the same *H* reasonably deserved to have for the same, when the aforesaid *B* should be thereto afterwards required. And the same *H* avers, That he the same *H*, the same Day and Year last above said, at *Islington* aforesaid, reasonably deserved to have 100 *l.* for the several Works

King's Bench. Works and Labours last mentioned, so as afore-
 said performed, whereof he the same *B*
 then and there had Notice. And whereas
 also, the afore-*said B* afterwards, to wit, the
 same Day and Year, at *Islington* afore-*said*,
 was indebted to the same *H* in other 40 *l.* of
 like Money, for diverse Goods, Wares, and
 Merchandizes, by the afore-*said H* to the
 same *B*, before that Time sold and delivered;
 and being so thereof indebted, the afore-*said*
B, in Consideration thereof afterwards, to
 wit, the Day and Year above-*said*, at *Islington*
 afore-*said*, assumed upon himself, and then
 and there likewise faithfully promised the
 same *H*, that he the same *B* would well and
 faithfully pay and content unto the same *H*
 the afore-*said* 40 *l.* last mentioned, when he
 should be thereto required. And whereas
 also, the afore-*said B* afterwards, to wit, the
 same Day and Year above-*said*, at *Islington* a-
 fore-*said*, in the County afore-*said*, in Consi-
 deration that he the same *H*, at the like spe-
 cial Instance and Request of the afore-*said B*,
 before then had sold and delivered to the
 same *B*, diverse other Goods, Wares, and
 Merchandizes, he the same *B* assumed upon
 himself, and then and there faithfully pro-
 mised the same *H*, that he the same *B* would
 well and faithfully pay and content to the
 same *H*, so much Money for the Goods,
 Wares, and Merchandizes last mentioned, to
 the same *B* so as afore-*said* sold and delivered,
 as those Goods, Wares, and Merchandizes,
 at the Time of the Sale and Delivery of the
 same, were reasonably worth, when he should
 be thereunto afterwards requested by the
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said *H*. And the said *H* avers, That the Goods, King's Bench.
 Wares, and Merchandizes last mentioned, so
 as aforesaid to the said *B* sold and delivered,
 were at the Time of the Sale and Delivery
 thereof, reasonably worth other 40 *l.* of like
 lawful Money, of which the aforesaid *B*, the
 Day and Year abovesaid, at *Islington* aforesaid,
 had Notice. And whereas also, the aforesaid
B afterwards, to wit, the same Day and Year
 abovesaid, at *Islington* aforesaid, had been in-
 debted to the same *H* in the Sum of 50 *l.* of like
 lawful Money, for the like Sum by him *H*,
 for the aforesaid *B*, and at his special Instance
 and Request, before that Time laid out and
 expended, and being so thereof indebted,
 the aforesaid *B*, in Consideration thereof af-
 terwards, to wit, the same Day and Year a-
 bovesaid, at *Islington* aforesaid, assumed upon
 himself, and then and there faithfully promised
 the same *H* to pay him the last mentioned Sum
 of 50 *l.* when he should be thereto afterwards
 required. And whereas also the aforesaid
B afterwards, to wit, the first Day of *Janu-*
ary, in the Year abovesaid, at *Islington* aforesaid,
 was indebted to the same *H* in other
 50 *l.* for his Service, and other Works and
 Labours in and about the Business aforesaid
 of him *B*, before that Time done and per-
 formed, and being so thereof indebted, the
 said *B*, in Consideration thereof afterwards,
 to wit, the same first Day of *January*, in the
 Year abovesaid, at *Islington* aforesaid, assumed
 upon himself, and then and there faithfully
 promised the same *H* to pay him the said 50 *l.*
 last mentioned, when he should be thereunto
 afterwards requested. And whereas also after-
 wards, to wit, the same first Day of *January*, in

King's Bench. the Year aboveſaid, at *Iſlington* aforeſaid, in Conſideration that he the ſame *H*, at the like Inſtance and Requeſt of the aforeſaid *B*, had then and there before made and performed diſverſe other Services, Works, and Labours for the aforeſaid *B*, in and about his other Buſineſſes aforeſaid; he the ſame *B*, in Conſideration thereof afterwards, to wit, the ſame Day and Year laſt mentioned, at *Iſlington* aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the aforeſaid *H*, that he the ſame *B* would well and truly pay and content him the ſame *H*, ſo much Money for his laſt mentioned Services, Works, and Labours, as he the ſame *H* reaſonably deſerved to have for the ſame. And the ſame *H* avers, That he the ſame *H*, the ſame Day and Year laſt mention'd, at *Iſlington* aforeſaid, reaſonably deſerv'd to have for his Services, Works, and Labours laſt mentioned, other 50 *l*. of like Money, whereof the ſame *B* had then and there Notice: Yet the aforeſaid *B*, not at all regarding his ſeveral Promiſes and Aſſumptions, ſo as aforeſaid made, but contriving and fraudulent-ly intending, the ſame *H*, in this Behalf, craftily and ſubtilly to deceive and defraud, hath not as yet paid the aforeſaid *H* the aforeſaid ſeveral Sums of Money, or any Penny thereof, altho' often required, but hath hitherto reſuſed, and ſtill doth reſuſe to pay, or any way content him for the ſame, to the Damage of him *H* 60 *l*. and therefore brings his Suit.

For hindering a Tenant to take Poſſeſſion according to Leaſe Paroll.

Middleſex, to wit, *Elizabetha Parry*, Widow, complains of *John Ewen*, in Cuſtody of the

the Marshal, &c. for that, to wit, That whereas, on the first Day of *March*, in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. at *Westminster*, in the County of *Middlesex*, a certain Discourse was moved and had between the aforesaid *Elizabeth* and *John*, of and concerning a certain Messuage and Garden, with the Appurtenances, situate and being at *Barnet*, in the County of *Middlesex* aforesaid, upon which said Discourse it was then and there agreed between the aforesaid *Elizabeth* and *John*, that the aforesaid *John* should suffer or permit the aforesaid *Elizabeth* to use, enjoy, and have the Possession of the Messuage and Garden aforesaid, with the Appurtenances, from the Feast of the Annunciation of the blessed Virgin *Mary*, in the Year abovesaid, for one whole Year from thence next following; and that the aforesaid *Elizabeth* should pay to the aforesaid *John* for the same, therefore, the Sum of 14 *l.* of lawful Money of *Great Britain*. And the aforesaid *John* then and there, in Consideration that the aforesaid *Elizabeth*, at the special Instance and Request of him *John*, had undertaken upon herself to pay to the aforesaid *John* the said Sum of 14 *l.* he the said *John* then and there faithfully promised to perform and fulfill all and singular the Articles contained in that Agreement, on the Part of him *John* to be performed and fulfilled. And whereas also afterwards, to wit, the same Day and Year, at *Westminster* aforesaid, the same *J* demised, and to Farm let unto the aforesaid *Elizabeth*, one other Messuage and Garden, with the Appurtenances, in *Barnet* aforesaid, to hold from the Feast of

Declarations in Case.

King's Bench. the Annunciation of the blessed Virgin *Mary*, in the Year abovesaid, for one whole Year from thence next following; the aforesaid *John* thereupon, then and there, in Consideration that the aforesaid *Elizabeth*, at the special Instance and Request of him *John*, had then and there paid to the same *John*, the Sum of Two shillings and six pence, and had assumed upon herself to pay to the same *John* the further Sum of 13 *l.* 17 *s.* 6 *d.* assumed upon himself, and then and there faithfully promised the same *Elizabeth*, to permit the aforesaid *Elizabeth* to enter in and upon the Messuage and Garden aforesaid last mentioned, with the Appurtenances, at the Feast of the Annunciation of the blessed Virgin *Mary*, in the fifth Year abovesaid, and from thence, for one whole Year, to have the Use and Possession thereof, according to the Form and Tenor of the Demise aforesaid. And the aforesaid *Elizabeth* avers, That she the same *Elizabeth* hath performed and fulfilled all and singular the Articles in the several Agreements contained, on the Part of her *Elizabeth* to be performed, according to the Form of the Agreement aforesaid; notwithstanding the aforesaid *John*, not at all regarding his several Promises and Assumptions in Form aforesaid made, but contriving, and deceitfully intending the same *Elizabeth*, in this Behalf, to deceive and defraud, hath not suffered the same *Elizabeth* to use, occupy, and have the Possession of the Messuage and Garden, with the Appurtenances aforesaid first mentioned, or to enter into, have the Use and Possession of the aforesaid last mentioned Messuage and Garden, but hath wholly

wholly refused the same *Elizabeth* to enter ^{King's Bench} into the same, and have the Use and Possession of them, and hath kept her *Elizabeth* out of the Possession of the same, from the Feast of the Annunciation aforesaid, unto — to the Damage of her *Elizabeth* — and therefore brings her Suit.

For immoderate riding a Horse, contrary to Promise.

Middlesex, to wit, *E F* Complains of *G H*, in the Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid *G*, on the seventh Day of *October*, in the Year of our Lord One thousand seven hundred and thirty one, at *Westminster*, in the County of *Middlesex*, in Consideration, that he the same *E*, at the special Instance and Request of him *G*, should lend and deliver to the same *G* one Gelding, for him *G* to ride single on, from *Westminster* aforesaid to the City of *Gloucester*, and from thence back from the same City of *Gloucester*, unto *Westminster* aforesaid, He, the same *G* assumed upon himself, and then and there faithfully promised the same *E*, that he the aforesaid *G* would well and sufficiently feed and keep, and moderately use the Horse aforesaid; and the same Horse, after his performing such Journey, would re-deliver to the same *E* safe and found; and that also he the aforesaid *G* would well and truly pay to the aforesaid *E*, at and after the Rate of 12 *d.* a Day for the Hire of the said Horse, for every Day he should so have and keep the aforesaid Horse, when he should be thereto

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King's Bench.

afterwards required. And although the same *E*, upon the Hopes, or in Expectation of the faithful Performance of the Promise and Assumption of the aforesaid *G*, at the Instance and Request of the same *G* afterwards, to wit, the Day and Year aforesaid, at *Westminster* aforesaid, lent and delivered to the aforesaid *G*, the Horse aforesaid, for the same *G* to ride upon, in Form aforesaid: And although also the aforesaid *G* had and kept that Horse for the Space of Fourteen Days next after the Lending and Delivery thereof: And although moreover the 12 *d.* for every Day of the same Fourteen Days amounted in the whole to Fourteen Shillings of lawful Money of *Great Britain*, yet the aforesaid *G*, not at all regarding his Promises and Assumptions aforesaid, but contriving and fraudulently intending the same *E*, in this Behalf, craftily and subtilly to deceive and defraud, hath not paid the aforesaid Fourteen Shillings to the same *E*, or any way contented him therefore, although by the same *E*, on the sixth Day of *September*, in the Year aforesaid, and often afterwards, at *Westminster* aforesaid, he had been required so to do, but hath hitherto absolutely refused, and still doth refuse to pay or content him for the same. And the same *G* hath so negligently kept the Horse aforesaid, and with carrying double in the Journey aforesaid, hath so much tired and immoderately worked and ill used the Horse aforesaid, that by Means thereof he is become of no Value to the said *E*, to the Damage of him *E* Ten Pounds, and therefore he brings his Suit, &c.

For

*For Money had and received, to the Use
of the Plaintiff's Testator.*

Middlesex, to wit, *M B*, and *A* his Wife, Executrix of the last Will and Testament of *James P*, deceased, complain of *X S*, in Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid *X*, in the Life-time of the said *James*, to wit, the ninth Day of *April*, in the Year of our Lord One Thousand seven Hundred and thirty one, at *Westminster*, in the County aforesaid, was indebted to the same *James* in his Life-time, in 20 *l.* for Money, by the same *X*, to the Use of the same *J*, before then had and received ; and being so thereof indebted, the same *X*, in Consideration thereof, assumed upon himself, and then and there faithfully promised the same *J* in his Life-time, to pay him the same Sum of Money: Yet the aforesaid *X*, not at all regarding his Promise and Assumption aforesaid, but contriving, and fraudulently intending the same *J* in his Life-time, and the aforesaid *Ann*, whilst she was Sole, after his Death, and the aforesaid *M* and *A*, after their Marriage, in this Behalf craftily and subtilly to deceive and defraud, hath not as yet paid the aforesaid Sum of Money, or any Penny thereof to them, or either of them, although the aforesaid *X*, in the Life-time of the same *J*, by him *James*, and after the Death of him *James*, by the said *Ann*, whilst she was Sole, and by the aforesaid *M* and *A* after their said Marriage, to wit, on the first Day of *January*,

King's Bench. in the Year abovesaid, was required so to do; but he hath hitherto absolutely refused, and still doth refuse to pay them, or any of them, to the Damage of them *M* and *A*, 50 *l.* and theretore they bring their Suit. And the same *M* and *A* bring here into Court, the Letters Testamentary of the abovesaid *James*, by which it fully appears to the Court here, her *A*, to be the Executrix of the abovesaid Will, and thereof to have Execution, &c.

Declaration for not saving a Man harmless, as Surety, &c.

York, to wit, *D R*, Complains of *S B*, in Custody of the Marthal, &c. for that, to wit, That whereas the abovesaid *S*, on the seventh Day of *October*, in the Year of our Lord One Thousand seven Hundred and thirty one, at *Leeds*, in the County of *York* abovesaid, in Consideration that the abovesaid *D*, at the special Instance and Request of him *S*, should become bound with the abovesaid *S*, as the Surety of him *S*, and for the proper Debt of him *S*, to one *WW*, for One Hundred Pounds of lawful Money of *Great Britain*, assumed upon himself, and then and there faithfully promised the same *D*, that he, the same *S*, would keep the same *D* harmless, of, and from all Damages, which to the same *D*, by occasion of his being bound for the abovesaid *S*, in Form abovesaid, might, or could happen. And the abovesaid *D* avers, that he, believing the abovesaid Promise and Assumption of the
afore-

aforesaid *S*, afterwards, to wit, the Day^{King's Bench.} and Year aforesaid, at *Leeds* aforesaid, at the special Instance and Request of him *S*, by his certain Writing Obligatory, then and there made, and sealed with the Seals of them *S* and *D*, and as their Deed then and there delivered to the aforesaid *W*, whereby the same *D*, together with the aforesaid *S*, as Surety of him *S*, and for the proper Debt of him *S*, in due Form of Law became bound to the aforesaid *W*, in the aforesaid 100 *l.* to be paid to the same *W*, his Executors, or Administrators. And the aforesaid *D* further avers, that the aforesaid *S*, hath not paid to the aforesaid *W*, his Executors, or Administrators, the aforesaid 100 *l.* in the Writing Obligatory aforesaid specified, or any Part thereof. And that the City of *York* aforesaid, is, and from the whole Time whereof the Memory of Man is not to the contrary, was an ancient City; and that within the same City is had, and from the whole Time aforesaid was had, a certain Court of Pleas of the Lord the King, of Record, held within the City aforesaid, before the Sheriff of the same City for the Time being, according to the Custom of the same City, from the whole Time aforesaid hitherto used and approved of in the same. And that the aforesaid *W*, for that that the aforesaid One Hundred Pounds, in the Writing Obligatory aforesaid specified to the same *W*, were not paid afterwards, to wit, at the aforesaid Court of the Lord the King, held within the City aforesaid, on *Monday*, &c. before *TH*, then Sheriff

King's Bench.

riff of the City aforesaid, entred and commenced his certain Plaint, against the aforesaid *D*, of a Plea of Debt, for 200 *l*. upon Demand, for Recovery of the Debt upon the Writing Obligatory aforesaid, and his Damages, by occasion of the Detention of that Debt; and thereupon in the same Court he wholly proceeded, that he, the same *W* afterwards, to wit, the Day and Year aforesaid, at the City of *York* aforesaid, within the Jurisdiction of the same Court, by Virtue of due Process of Law out of the same Court, upon the Plaint aforesaid, issuing by one *R M*, then Serjeant at Mace, and Officer of that Court, caused him *D*, to be taken and arrested, by which the same *D*, to free himself from the Arrest aforesaid, and for the obtaining of his Liberty afterwards, to wit, the Day and Year last aforesaid, at the City of *York* aforesaid, was forced and compelled to pay the same *W*, the One Hundred Pounds Debt in the Writing Obligatory aforesaid specified, and also twenty Shillings for the Damages and Costs of the aforesaid *W*, by him about his Suit in that Behalf laid out, and also to expend the Sum of 2 *l*. by occasion of the Premises aforesaid. And so the same *D* saith, that he, by occasion of being bound for the aforesaid *S*, in Form aforesaid, is dampnified in the same several Sums of Money, amounting in the whole to 103 *l*. whereof the same *D* afterwards, to wit, the — Day of — in the Year — at the City of *York* aforesaid, gave Notice to the aforesaid *S*, and then and there required the same *S*, to keep indemnified

nified the aforesaid *D*, of, and from the ^{King's Bench.} Damages aforesaid, according to the Promise and Assumption of him *S* aforesaid. And whereas also the same *D* afterwards, to wit, the Day and Year last aforesaid, at *York* aforesaid, at the special Instance and Request of the aforesaid *S*, had lent to one *WW*, 51 *l.* of like lawful Money of *Great Britain*, and the same 51 *l.* of the same *WW*, had then afterwards intended to demand, the aforesaid *S* afterwards, to wit, the same Day and Year last aforesaid, at the City of *York* aforesaid, in Consideration of the lending of the same 51 *l.* to the aforesaid *WW*, in Form aforesaid, and also in Consideration that the aforesaid *D*, at the special Instance and Request of him *S*, should not trouble the aforesaid *W*, for the aforesaid 51 *l.* by him *D*, to the aforesaid *W*, so as aforesaid lent, assumed upon himself, and then and there promised the aforesaid *D*, that he would well and truly pay to the same *D*, the aforesaid 51 *l.* when he should be thereto afterwards required. And the aforesaid *D* avers, that he believing the last mentioned Promise and Assumption of the aforesaid *S*, from the aforesaid Time of the making that Promise and Assumption, hitherto hath not any way molested the aforesaid *WW*, for the aforesaid 51 *l.* by him *D*, to the same *W*, in Form aforesaid lent, nor is he for the same any way hitherto satisfied. And that he, the same *D*, afterwards, to wit, the Day and Year aforesaid, at the City of *York* aforesaid, gave the aforesaid *S* Notice thereof, and then and there



King's Bench. there required the same *S*, to pay to the same *D*, the aforesaid 51 *l.* according to the Promise and Assumption of him *S* aforesaid. Notwithstanding, the aforesaid *S*, no way regarding his several Promises and Assumptions aforesaid, but contriving, and fraudulently intending him *D*, craftily and subtilly to deceive and defraud, hath not kept him *D*, harmless and indemnified, according to the Promise and Assumption of him *S*, first above mentioned; nor hath hitherto paid to the same *D*, the aforesaid 51 *l.* according to the last mentioned Promise and Assumption of him *S*, but hath hitherto entirely refused, and still doth refuse to perform his several Promises and Assumptions aforesaid, to the Damage of him *D*, Two Hundred Pounds; and thereof brings his Suit.

By a Surgeon, for Curing a Wound.

York, to wit, *C D*, Complains of *A B*, in Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid *A*, on the seventh Day of *October*, in the Year of our Lord One Thousand seven Hundred and thirty one, at *Leeds*, in the said County of *York*, greatly laboured, and was afflicted with a dangerous Wound in his Hand, and the aforesaid *A*, knowing the same *C* to be skilled in the Art of a Chirurgeon, and in curing of many Wounds and Diseases, the aforesaid *A*, the Day and Year aforesaid, in Consideration that the same *C*, at the special Instance and Request of the aforesaid

faid *A*, would use his Diligence, and apply Plaisters, and endeavour to cure the Hand of him *A*, of the Wound aforesaid, the aforesaid *A* assumed upon himself, and then and there faithfully promised the same *C*, that he, the aforesaid *A*, would well and faithfully pay and content the same *C*, what he should reasonably deserve of the same *A*. And the same *C* avers, that he, upon the Hope of the faithful Promise and Assumption aforesaid, of the aforesaid *A*, used his Diligence, and applied Plaisters to the Hand of the aforesaid *A*, and endeavoured to cure the Wound aforesaid: And by the Care, Diligence, and Labour, Plaisters and Expences of him *C*, so as aforesaid applied, the Wound aforesaid was in a great Degree healed and cured. And the same *C* further avers, That he, the same *C*, reasonably deserved to have of the aforesaid *A*, for his Diligence, Labour, and Plaisters, so as aforesaid applied, and for the Cure of the Wound aforesaid, 50 *l.* whereof the same *A*, at *Leeds* aforesaid, on the Day and Year aforesaid, had Notice; yet the aforesaid *A* not at all regarding his Promise and Assumption aforesaid, but contriving, and fraudulently intending him *C*, craftily and subtilly to deceive and defraud in this Behalf, hath not paid to the same *C*, the aforesaid 50 *l.* or any Penny thereof, according to his Promise and Assumption aforesaid, although the aforesaid *E*, by the same *C* afterwards, to wit, the same Day and Year aforesaid, at *Leeds* aforesaid, was required so to do: But he hath hitherto absolutely refused,

King's Bench. refused, and still doth refuse to pay the same to him, to the Damage of him C, 20 l. And thereof brings his Suit.

On a Note given by the Defendant's Servant, to the Plaintiff's Husband in his Life-time ; for which she sues as Administratrix to her said late Husband.

London, to wit, *Elizabeth Potter*, Administratrix of all and singular the Goods and Chattels, Rights and Credits, which were *Ralph Potter*, who died intestate, complains of *George Downes*, in Custody of the Marshal, &c. for that to wit, That whereas *William Hillier*, as Servant of him *George Downes*, and by his Command, on the eleventh Day of *November*, in the Year of our Lord One Thousand seven Hundred and thirty one, at *London*, in the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*, made a certain Note in Writing, subscribed with the proper Hand of him *William Hillier*, by which said Note, the aforesaid *William Hillier*, promised to pay to the aforesaid *Ralph Potter*, by the Name of *Mr. Ralph Potter*, 30 l. for his Master *George Downes* upon Demand, for Value received ; by which the aforesaid *George Downes*, became liable to pay to the same *Ralph Potter* in his Life-time, the aforesaid thirty Pounds, according to the Tenor of the Note aforesaid ; and thereupon the same *George*, in Consideration thereof, assumed upon himself, and then and there faithfully promised

promised the same *Ralph* in his Life-time, to pay to the same *Ralph*, the aforesaid thirty Pounds, according to the Tenor of the Note aforesaid. And whereas also the aforesaid *George* afterwards, to wit, the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, was indebted to the same *Ralph* in his Life-time, in other thirty Pounds, of lawful Money, for the like Sum of Money, by him *George*, at the special Instance and Request of him *George*, to the Use of him *Ralph*, before then had and received. And so being thereof indebted, the aforesaid *George* afterwards, to wit, the same Day and Year at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, assumed upon himself, and then and there faithfully promised the same *Ralph* in his Life-time, to pay him the last mentioned thirty Pounds, when he should be thereto required. Yet the aforesaid *George* little regarding his several Promises and Assumptions aforesaid, in Form aforesaid made, but contriving, and deceitfully intending the same *Ralph* in his Life-time, and the aforesaid *Elizabeth* after his Death, to deceive and defraud of the aforesaid several Sums of Money, hath not paid the same several Sums, or any Part thereof, to the same *Ralph* in his Life-time, or after his Death, to the aforesaid *Elizabeth*, to whom Administration of all and singular the Goods and Chattels, Rights and Credits, which were the aforesaid *Ralph*, at the Time of his Death, on the — Day of — was granted by — to whom the granting of Administrations of
Right

King's Bench. Right belonged ; but to the same *Ralph* in his Life-time, or after his Death, to the aforesaid *Elizabeth* hath absolutely refused to pay, and still doth refuse to pay the aforesaid *Elizabeth* the same, although the aforesaid *George* afterwards, to wit, the — Day of — in the Year — at *London* aforesaid, in the Parish and Ward aforesaid, by him *Ralph* in his Life-time, and after his Death, by the aforesaid *Elizabeth*, was required so to do. Wherefore the aforesaid *Elizabeth* saith, that she is the worse, and hath Damage to the Value of thirty Pounds, and thereof she brings her Suit. And the aforesaid *Elizabeth* brings here into Court, the Letters of Administration, which testify the granting of the Administration in Form aforesaid, &c.

For not delivering Goods bought.

Middlesex, to wit, *A N*, Complains of *J T*, in Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid (*Defendant*,) on the — Day of — at *Westminster*, had sold to the same (*Plaintiff*,) sixty Combs of Malt, of *Lynn* Measure, in the County of *Norfolk*, for twenty Shillings, of lawful Money of *Great Britain*, then and there in Hand paid, by the aforesaid (*Plaintiff*,) to the same (*Defendant*;) and for sixteen Shillings of like lawful Money, to be paid by the aforesaid (*Plaintiff*,) to the same (*Defendant*,) for every Comb thereof, upon the Delivery thereof; the aforesaid (*Defendant*,) afterwards, to wit, the — Day of — at, &c. in Consideration

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tion thereof, and in Consideration that the ^{King's Bench.} same (*Plaintiff*,) at the special Instance and Request of him (*Defendant*,) then and there undertook upon himself, and had faithfully promised the same (*Defendant*,) to pay to the same (*Defendant*,) sixteen Shillings, for every Comb of the aforesaid sixty Combs, upon the Delivery of the same sixty Combs of Malt, to the same (*Plaintiff*, besides the aforesaid twenty Shillings, assumed upon himself, and then and there faithfully promised the same (*Plaintiff*,) that he, the aforesaid (*Defendant*,) the aforesaid sixty Combs of Malt, to the same (*Plaintiff*,) at, or before *Lammas* Day next following, at *H* aforesaid, would well and faithfully deliver. Yet the aforesaid (*Defendant*,) &c. the aforesaid sixty Combs of Malt, or any Part thereof, to the same (*Plaintiff*,) hath not delivered, but hitherto, &c.

For a Wager concerning a Horse-Match.

Middlesex, to wit, *J R*, Complains of *J B*, in Custody of the Marshal, &c. for that, to wit, That whereas on the first Day of *April*, in the fifth Year of the Reign of the Lord *George*, now King of *Great Britain*, &c. at &c. a certain Discourse was moved and had, between the aforesaid (*Plaintiff*,) and the aforesaid (*Defendant*,) as well of, and concerning a certain Horse-Match, before then made and performed, as of, and concerning a certain Wager between the same (*Defendant*,) and one *FC*, concerning the Match aforesaid, before then made, and of, and

C c

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King's Bench.

concerning the Sum of twenty Shillings, of lawful Money of *Great Britain*, by the aforesaid *FC*, and of the Sum of ten Shillings, of like Money, by the aforesaid (*Defendant*,) before then respectively deposited in the Hands of him (*Plaintiff*,) to be delivered to such of them *FC*, and *J B*, as should win the said Wager. And upon that Discourse, the aforesaid (*Defendant*,) then and there affirmed to the same (*Plaintiff*,) that he, the aforesaid (*Defendant*,) had won that Wager; and that the several Sums of Money aforesaid, were due and payable to the same (*Defendant*,) he, the said (*Defendant*,) then and there, in Consideration that the same (*Plaintiff*,) at the special Instance and Request of the aforesaid (*Defendant*,) should deliver to the aforesaid (*Defendant*,) the aforesaid twenty Shillings, and ten Shillings, so as aforesaid deposited in his Hands, assumed upon himself, and then and there faithfully promised the same (*Plaintiff*,) that he, the aforesaid (*Defendant*,) would thereupon keep indemnified him the (*Plaintiff*,) from the aforesaid *F*. And the same (*Plaintiff*) avers, that he believing the Promise and Assumption aforesaid, of the aforesaid (*Defendant*,) then and there, at the special Instance and Request of the aforesaid (*Defendant*,) delivered to the aforesaid (*Defendant*,) the aforesaid twenty Shillings and ten Shillings. And the same (*Plaintiff*) further avers, that he, the aforesaid (*Defendant*,) hath not won the aforesaid Wager; and that the aforesaid (*Defendant*) had Notice of the said *FC* winning the said Wager, to wit, the thirty first Day of *March*,
in

in the sixth Year aboveſaid, at, &c. And ^{King's Bench.} by the ſame (*Plaintiff*), was requested to keep the ſame (*Plaintiff*) indemniſied from the aforeſaid *F*, for the aforeſaid thirty Shillings, ſo as aforeſaid delivered to the ſame (*Defendant*). Yet the aforeſaid (*Defendant*), little regarding his Promise and Aſſumption aforeſaid, in Form aforeſaid made, but contriving, and fraudulently intending the ſame (*Plaintiff*), in this Behalf, craftily and ſubtilly to deceive and defraud, hath not kept indemniſied the aforeſaid (*Plaintiff*) from the aforeſaid *FC*, for the aforeſaid thirty Shillings, ſo as aforeſaid delivered to the ſame (*Defendant*), by him the (*Plaintiff*;) but the ſame (*Plaintiff*) afterwards, to wit, the aforeſaid firſt Day of *April*, in the ſixth Year aboveſaid, at, &c. was compelled to pay the aforeſaid thirty Shillings, to the ſame *FC*, and hath there expended diſverſe Sums of Money againſt the aforeſaid *FC*. Wherefore the ſame (*Plaintiff*) ſaith, that he is greatly injured and hurt, and hath Damage to the Value of, &c.

In Conſideration Plaintiff would lend Defendant a Horſe, he promiſed if he was hurt, to pay Plaintiff Six Pounds ſix Shillings.

London, to wit, *E H*, Complains of *FM*, in Cuſtody of the Marshal, &c. for that, to wit, That whereas the aforeſaid (*Defendant*), on the eighteenth Day of *Auguſt*, in the Year of our Lord One Thouſand ſeven Hun-

King's Bench.

dred and thirty two, at *London*, to wit, in the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*, in Consideration that the same (*Plaintiff*,) at the special Instance and Request of the aforesaid (*Defendant*,) then and there had lent and hired to the same (*Defendant*,) a certain gray Horse of him (*Plaintiff*,) for three Weeks, or one Month, for a certain Sum of Money agreed upon, assumed upon himself, and then and there faithfully promised the same (*Plaintiff*,) that in case that Horse should happen to be dampnified by him (*Defendant*,) then he would pay to the same (*Plaintiff*,) Six Pounds six Shillings on Demand: And the same (*Plaintiff*) avers, that within the Time which the aforesaid (*Defendant*) had, and kept the Horse aforesaid for his Use, and in his Possession, on the Hire aforesaid, he, the said (*Defendant*,) rode that Horse so swiftly and irregularly, and worked him so inordinately and immoderately, and broke and lamed his knees, that the Horse at the Time which the aforesaid (*Defendant*) ought to have redelivered him to the same (*Plaintiff*,) to wit, the twenty eighth Day of *September*, in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, was greatly dampnified, lame, worsted, and hurt, and became of little, and almost of no Value, to the same (*Plaintiff*,) Yet the aforesaid (*Defendant*) not at all regarding his Promise and Assumption aforesaid, but contriving, and fraudulently intending him (*Plaintiff*,) in this behalf craftily and subtilly to deceive and defraud, hath not as yet paid, or any way con-

contented to the same (*Plaintiff*,) the afore- King's Bench.
 said Six Pounds six Shillings, or any Penny
 thereof, (although by him (*Plaintiff*,) on the
 tenth Day of *October*, in the Year abovesaid,
 at *London* abovesaid, in the Parish and Ward
 abovesaid, had been required so to do;) but
 hath hitherto altogether refused, and still
 doth refuse to pay the same to him. And
 whereas also the abovesaid (*Defendant*,) the
 abovesaid twenty eighth Day of *August*, in
 the Year of our Lord abovesaid, at *London*
 abovesaid, in the Parish and Ward abovesaid,
 in Consideration that the same (*Plaintiff*,)
 at the special Instance and Request of the
 abovesaid (*Defendant*,) had hired to the afore-
 said (*Defendant*,) one other Horse of him,
 (*Plaintiff*,) for three Weeks, or one Month,
 for a certain Sum of Money, agreed upon
 between them, assumed upon himself, and
 then and there faithfully promised the same
 (*Plaintiff*,) that in Case the last mentioned
 Horse should become dampnified by him,
 (*Defendant*,) then he would pay to the same
 (*Plaintiff*,) for the same Horse, Six Pounds
 six Shillings: And the same (*Plaintiff*) avers,
 that within the Time which the abovesaid
 (*Defendant*) had, and kept the last mentioned
 Horse for his Use, and in his Possession, on
 the last mentioned Hire, that the said (*De-
 fendant*,) rode the last mentioned Horse so
 speedily and irregularly, and so inordinately
 and immoderately worked him, and broke
 and maimed his Knees, that the last menti-
 oned Horse, at the Time which the afore-
 said (*Defendant*) ought to re-deliver him, to
 the same (*Plaintiff*,) to wit, the eighteenth

King's Bench. Day of September, in the Year of our Lord
 abovesaid, at London abovesaid, in the Parish
 and Ward abovesaid, was greatly dampnified,
 lame, hurt, and worsted, and became of little,
 and almost of no Value, to him, (*Plaintiff* :)
 Yet the abovesaid (*Defendant*) little regard-
 ing, (*as in others.*)

*Against an Executor, for Masons Work
 done, Materials found, and Goods
 Sold and Delivered.*

Middlesex, to wit, J P Complains of A P,
 Executor of the last Will and Testament of
 W P, Gentleman, deceased, in Custody of
 the Marshal, &c. for that, to wit, That
 whereas the abovesaid W in his Life-time,
 on the second Day of May, in the Year of
 our Lord One Thousand seven Hundred
 and thirty two, at Westminster, in the County
 of Middlesex, in Consideration that the same
 J, at the special Instance and Request of the
 abovesaid W, had made and performed for the
 abovesaid W in his Life-time, diverse Masons
 Work, and had found and provided Ma-
 terials and Things necessary thereto, and
 also had sold and delivered to the same
 W, diverse Goods, Wares, and Merchan-
 dizes, assumed upon himself, and then and
 there faithfully promised the same J, that
 he, the abovesaid W, would well and truly
 pay, and content to the same J, so much
 Money as the same J reasonably deserved
 to have for the Premises. And the same J
 avers, that he reasonably deserved to have
 for

for the Premises, Twenty five Pounds, where- King's Bench.
of the aforesaid *W* in his Life-time, to wit,
the — Day of — in the Year abovesaid,
at *Westminster* aforesaid had Notice. And
whereas also the aforesaid *W* in his Life-
time, to wit, the third Day of *July*, in the
Year abovesaid, at *Westminster* aforesaid, was
indebted to the same *J* in other twenty five
Pounds, for diverse other Masons Work, by
him *J*, for the aforesaid *W*, and at his Re-
quest before that Time done and perfor-
med, and for Materials and Things neces-
sary thereunto, by him found and provi-
ded, and also in twenty Pounds for diverse
Goods, Wares, and Merchandizes, by the
aforesaid *W*, of the aforesaid *J*, before that
Time bought and had ; and so being thereof
indebted, the aforesaid *W*, in Consideration
thereof afterwards, in his Life-time, to wit,
the Day and Year abovesaid, at *Westminster*
aforesaid, assumed upon himself, and then and
there faithfully promised the same *J*, that he,
the aforesaid *W*, would well and truly pay and
content to the same *J*, the said two last men-
tioned Sums of Money when he should be after-
ward requested thereto. Yet the aforesaid *W*
in his Life-time, and the aforesaid *A*, after the
Death of him *W*, not at all regarding the aforesaid
several Promises and Assumptions of the
aforesaid *W*, but contriving, and fraudu-
lently intending him *J*, in this Behalf,
craftily and subtilly to deceive and defraud,
the aforesaid several Sums of Money, or
any Penny thereof, to the same *J*, although
often requested, have not paid, or any way
contented, but have hitherto absolutely re-
C c 4 fused

King's Bench. refused to pay it to him, and the aforesaid *A* still refuses to pay it to him, to the Damage of him 7 Forty Pounds, and thereof he brings his Suit.

Against the Marshal for an Escape.

Middlesex, to wit, *Thomas Billingfley*, Gentleman, complains of *William Mullins*, Esq; Marshal of the *Marshalsea* of the Lord the King, before the King himself, being present here in Court in his proper Person, for that, to wit, That whereas at the Time of exhibiting the Bill here afterwards mentioned, and long before, and always afterwards the same *William* was, and still is Marshal of the *Marshalsea* of the Lord the King, before the King himself, and by reason thereof, for the same Time, had the keeping of the Prison of the said Lord the King of the *King's Bench*, and of all the Prisoners committed to the same Prison, by him in that Prison to be safely kept, until such Prisoners out of his Custody should be discharged by due Form of Law; that Prison for the whole same Time, and still being kept at *Southwark*, in the County of *Surrey*. And whereas, at the Time of exhibiting that Bill, one *Arthur Annesley*, Esq; was actually in the Custody of him *William*, Prisoner in the Prison aforesaid, there charged in Custody of him *William*, Marshal of the *Marshalsea* aforesaid, at the Suit of him *Thomas*, and so being in that Prison, the same *Thomas Billingfley*, at some other Time, to wit, in the Term of the *Holy Trinity*, in the
sixth

sixth Year of the Lord the now King, in the ^{King's Bench.} Court of him the Lord the King, before the King himself, at *Westminster*, in the County of *Middlesex* aforesaid, in due Form of Law, by Bill, without the Writ of the said Lord the King, impleaded the same *Arthur*, so in Custody of the aforesaid *W*, (the same *W* then and still being Marshal of the *Marshallsea* aforesaid) in a certain Plea of Trespass upon the Case, upon an Assumption, and for the not Performance thereof, to the Damage of him *Thomas* Forty Pounds, and thereof hath brought his Suit, whereof the aforesaid *William* then and there had Notice, in like manner. Thereupon was Process, That afterwards, to wit, in the Term of *St. Hillary* then next following, It was considered by the same Court here, that the aforesaid *Thomas* should recover against the aforesaid *A*, Twenty eight Pounds, as well for his Damages which the same *T* had sustained, as well by Occasion of the Non-performance of that Assumption, as for his Costs and Charges by him about his Suit in that Behalf put unto, whereof the same *A* is convicted; which said Judgment still remains in the Court here unreversed, disannulled, or satisfied, as by the Record thereof here in Court, to wit, at *Westminster* aforesaid, remaining, more fully appears: And the same *T* intended to have charged the same *A*, in the Prison aforesaid, under the Custody of the aforesaid *W*, in Execution for the Damages, Costs, and Charges aforesaid so recovered; yet the aforesaid *William* being, as is aforesaid, Marshal of the *Marshallsea* aforesaid, little esteeming

King's Bench. ing the Duty of his Office, but designing and intending the same *T*, in this Behalf, unjustly to oppress, and of his proper Remedy for the obtaining his Damages, Costs, and Charges aforesaid, by him as aforesaid recovered, to obstruct and hinder, and also altogether to deprive him thereof, after that the same *T* had so exhibited his Bill, and before that the same *T* had charged the same *A* in Execution upon that Judgment, to wit, the 11th Day of *May* in the sixth Year of the Reign of the Lord the now King at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, without the Leave and against the Will of him *T*, (the same *T* of the Money by him as aforesaid recovered, or any Parcel thereof, then, or still not being paid or satisfied) without the Leave, and against the Will of him *T*, suffered the same *A* to escape voluntarily, and go at large where he would; and the same *A* always afterwards withdrew and himself absconded to Places altogether unknown to the same *T*, and still in such Places unknown to the same *T* wanders, skulks, and conceals himself, so that he could not, nor still cannot be charged or taken in Execution upon the Judgment aforesaid, by which the same *Thomas* is very likely to lose wholly the Benefit of his Judgment aforesaid, and to be disappointed of all Remedy for obtaining the Money aforesaid, so as aforesaid recovered, to the Damage of him *T* 40 *l*. and thereof he brings his Suit, &c. Pledges, &c.

Against

*Against an Innkeeper for losing the Goods
of his Guest.*

Middlesex, to wit, *Thomas Johnson* Complains of *John Simpson*, in Custody of the Marshal, &c. for that, to wit, That whereas, according to the Law and Custom of the Reign of the Lord *William*, late King of *England*, Innkeepers, who hold and keep common Inns, to entertain Men in Parts where such Innkeepers are by Night and Day obliged to keep the Goods and Chattels, being within those Inns, of them as well going into, as returning from the same Inns, without pilfering and Loss, so that in Defect of the said Innkeepers or their Servants Damage, may not any way happen to such Guests. And whereas the aforesaid (*Defendant*) before the Eleventh Day of *April*, in the sixth Year of the Reign of the Lord the now King, keeping a certain common Inn, having a Sign, which said Inn is called the Bull in the Strand, in the Parish, &c. in the said County of *Middlesex*, one *W T*, a Servant of the said (*Plaintiff*) and having a Trunk locked (the Goods of him (*Plaintiff*) being in the same Trunk, to the Value of 100 l.) as his Guest in the same Inn entertained; but certain Malefactors, on the aforesaid eleventh Day of *April*, in the sixth Year aforesaid, the Trunk, with the aforesaid Goods of him (*Plaintiff*), being in the same Trunk, in the aforesaid Inn, of him (*Defendant*), then likewise being at the Parish aforesaid, in the County aforesaid, found by the Negligence of the aforesaid (*Defendant*)
and

King's Bench. and his Servants, in Custody of the Trunk
aforesaid, took, carried away, and converted
to their own proper Use ; and other Enor-
mities they brought upon him, against the
Law and Custom aforesaid : Wherefore the
same (*Plaintiff*) saith, that he is the worse, &c.

*Against an Attorney and others, for issu-
ing a Capias ad Satisfaciendum on a
Judgment, without the Assent of the
Plaintiff.*

York, to wit, NS, Complains of J M,
in Custody of the Marshal of the Mar-
shalsea of the Lord the King, before the
King himself, being for that, to wit, That
whereas he the same (*Defendant*,) otherwise,
to wit, in the Court of the Lord the
now King, to wit, in the Term of St. Mi-
chael, in the fourth Year of the Reign of
the Lord the now King, out of his Malice
and Envy, contriving and maliciously in-
tending the same (*Plaintiff*,) against all Right,
to oppress, injure, and impoverish, did pro-
secute, and procure to be prosecuted out of
the Court of the said Lord the King here,
before the King himself, (the same Court
at *Westminster*, in the County of *Middlesex*
then being,) in the Name of one TW, with-
out the Assent, Consent, or Agreement of
the same TW, a certain Writ of the said
Lord the King, of *Capias ad Satisfaciendum*,
against the aforesaid *Plaintiff*, directed to
the then Sheriff of *Middlesex*, by which said
Writ, the same Lord the King, commanded
the

the same then Sheriff of *Middlesex*, that the ^{King's Bench.} same Sheriff should take him the *Plaintiff*, if he were to be found in his Bailiwick, and should keep him in safe Custody, so that he might have his Body before the said Lord the King at *Westminster*, on *Monday* next after the *Octaves* of *St. Hillary*, then next following, to satisfy unto the aforesaid *TW*, of twenty seven Pounds of Debt, and also forty three Pounds for his Damages which he had sustained, as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him laid out about his Suit in that Behalf, whereof the same (*Plaintiff*) was convicted: Which said Writ, the same (*Defendant*,) out of his Malice and Envy aforesaid, afterwards, to wit, on the nineteenth Day of *December*, in the Year abovesaid, at the Parish of *St. Andrew Holbourn*, in the County of *Middlesex* aforesaid, to the same then Sheriff of *Middlesex*, maliciously, and for the Vexation and Trouble of him (*Plaintiff*,) without the Consent, and Assent, or Agreement of him *TW*, caused to be delivered in Form of Law to be executed; by Virtue of which said Writ, the same then Sheriff of *Middlesex*, afterwards, and before the Return of the same Writ, to wit, the aforesaid nineteenth Day of *December*, in the Year abovesaid, at the Parish, &c. in the County of *Middlesex* aforesaid, made his certain Warrant, under Seal of Office of him the aforesaid then Sheriff, directed to one *Edward Chase*, then Bailiff of the Liberty of the Dean and Chapter of the Cathedral Church of *St. Paul, London*, in the

King's Bench. the County of *Middlesex* aforesaid being, and then and there having the Return and Execution of Writs within the Liberty aforesaid; by which said Warrant, the aforesaid then Sheriff of the County of *Middlesex*, gave in Charge to the aforesaid *EC*, then Bailiff of the Liberty aforesaid being, (that Liberty being within the County of *Middlesex*,) that he should take the aforesaid (*Plaintiff*,) if he should be found in his Bailiwick, and him safely, &c. so that he might have his Body before the said Lord the King, at *Westminster*, on *Monday* next, after the *Octaves* of *St. Hillary*, then next following, to satisfy unto the aforesaid *TW*, a Debt of twenty seven Pounds, and also forty three Pounds, as well for his Damages which he sustained, &c. as for his Costs, &c. whereof he was convicted, &c. Which said Warrant afterwards, and before the Return of the same Writ, to wit, the aforesaid nineteenth Day of *December*, in the Year abovesaid, at the Parish, &c. to the aforesaid *EC*, by the aforesaid (*Defendant*,) out of his Malice and Envy aforesaid, was delivered, or caused to be delivered, in Form of Law to be executed; by Virtue of which said Warrant, the aforesaid *EC* afterwards, and before the Return of the Writ and Warrant aforesaid, to wit, the seventh Day of *January*, in the Year abovesaid, at the Parish of *St. Andrew Holbourn* aforesaid, in the County of *Middlesex* aforesaid, within the aforesaid Liberty of the said Dean and Chapter of the Cathedral Church of *St. Paul, London*, aforesaid, in the County of *Middlesex* aforesaid, took, and arrested

arrested the aforesaid (*Plaintiff*,) for the *King's Bench*. Cause aforesaid, and him, (*Plaintiff*,) under his Custody, by Virtue of the Warrant aforesaid, to him the aforesaid *Edward Chase*, as aforesaid directed, from the aforesaid seventh Day of *January*, in the fourth Year of the Reign of the said Lord the King aforesaid, at the Parish of *St. Andrew Holbourn*, in the County of *Middlesex* aforesaid, within the Liberty aforesaid, had, and detained; and him (*Plaintiff*,) for the Space of three Weeks then next following, had, and detained: By Occasion of which said Caption, Arrest, and Detention of him (*Plaintiff*,) out of the Malice and Envy of the aforesaid (*Defendant*,) so as is aforesaid, there caused and procured not only several difficult Business of him (*Plaintiff*,) at the Time of the taking Arrest, and Detention of him (*Plaintiff*,) there to be gone through by Occasion thereof, remained undone. But also the same (*Plaintiff*,) several great Sums of Money by occasion thereof, there was compelled and forced to expend and lay out, to the extream impoverishing of him (*Plaintiff*,) and of his whole Family. Wherefore the same (*Plaintiff*) saith, that he is the worse, and hath Damage to the Value of One Thousand Pounds, and thereof he brings his Suit, &c. *Pledges, &c.*

Declarations in Case.

For causing a Man to be Arrested, and held to Bail without Cause.

York, to wit, *Joseph Nicholls* complains of *John Legard*, in Custody of the Marshal of the *Marshalsea* of the Lord the King, before the King himself being, for that, to wit, That whereas on the seventh Day of *September*, in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. at *Pontefract*, in the County aforesaid, the aforesaid *John* contriving Malice, and maliciously and fraudulently intending to oppress and impoverish the same *Joseph*, and cause him *Joseph* to be arrested, at the Suit of the aforesaid *John*, and to deter the Friends and Neighbours of him *Joseph*, from becoming bound for the Appearance of the aforesaid *Joseph*, with an Intent that the aforesaid *Joseph* should be detained in Prison for want of Security for his Appearance: And moreover, that he should be bereaved and deprived of his Liberty, without any just Cause, falsely and maliciously, and fraudulently caused and procured the same *Joseph*, in the Name of the aforesaid *J*, by Virtue of a certain Warrant of *John Ramsden*, Esq; then Sheriff of *York*, under the Seal of his Office of Sheriff, Sealed, bearing Date the first Day of *August*, in the Year aforesaid, pretended to be made by the same Sheriff, upon a certain Writ of the said Lord the now King, of *Latitat*, before issuing out of the Court of the said Lord the King, before the King himself at
West.

Westminster, in the County of *Middlesex*, to King's Bench
answer unto the aforesaid *I* of a Plea of
Trespas, and also of a Bill of him *I*, a-
gainst him *Joseph*, for One Hundred Pounds,
according to the Custom of the same Court,
to be exhibited, to be arrested and impris-
oned, and in Prison to be detained for the
Space of four Weeks, when in Truth the
aforesaid *John*, at the Time of the Arrest
and Imprisonment aforesaid, had not any just
Cause of Action against the aforesaid *Jo-
seph*, by which diverse difficult Business of
him *Joseph*, for the Time aforesaid, wholly
remained undone. And the aforesaid *Jo-
seph* was forced and compelled to pay se-
veral great Sums of Money for his Deli-
verance from his Imprisonment aforesaid :
Wherefore the same *Joseph* saith, that he is
the worse, and hath Damage to the Value
of One Hundred Pounds, and thereof brings
his Suit, &c.

*For locking up a Gate, and thereby
stopping up a Way, so that the Plain-
tiff could not get to her Coal-Pit.
Brought by the Plaintiff's next
Friend.*

York, to wit, Be it remembred, that other-
wise, to wit, in the Term of *Easter* last
past, before the Lord the King at *Westmin-
ster*, came *Catherine Stringer* the Younger,
who is under the Age of twenty one Years,
by *Catherine Stringer* the Elder, who is ad-
mitted by the Court of the Lord the King

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here,

King's Bench. here, to prosecute for the same *Catherine Stringer* the Younger, as the next Friend of her *Catherine* the Younger, and brought here into the Court of the said Lord the King then there, her certain Bill against *R W*, Baronet, *C W*, Gent. *R F*, and *R W*, in Custody of the Marshal, &c. of a Plea of Trespass upon the Case, &c. And the Pledges of prosecuting are *John Doe*, and *Richard Roe*, which said Bill follows in these Words, to wit, *York*, to wit, *Catherine Stringer* the Younger, who is under the Age of One and twenty Years by *Catherine Stringer* the Elder, who is admitted by the Court of the Lord the King here, to prosecute for the same *C* the Younger, as the next Friend of her *C* the Younger, Complains of *R W*, Bart. *E W*, Gent. *R F*, and *R W*, in Custody of the Marshal of the *Marshalsea*, of the Lord the King, before the King himself being, for that, to wit, That whereas the same *CS* the Younger, on the fifteenth Day of *April*, in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. and long before, and from thence hitherto hath been, and now is seized of a certain Coal-Mine in *Sharlston*, in the County aforesaid, lying, and being in a certain great Field there, called *Sharlston-Field*, in her Demean, as of Fee. And whereas also very many of the Subjects of the Lord the King, buying, and willing to buy Coals at the Coal-Mine aforesaid, conveniently may, and are accustomed to come to, and pass over, in, by, and over the common King's Way, leading in, and by a certain Passage, called *Fowleby-Lane*, in

Fowleby

Fowleby in the County aforesaid, and from King's Bench.

thence unto the Field aforesaid, with their Carts and Carriages, to the Coal-Mine of her C aforesaid, and the Coals there bought and got from thence by the same Way to bring and carry away ; and the same C, and her Servants conveniently may, and have been accustomed to pass over, in, and by the same Way, with their Carts and Carriages, for the necessary and convenient Trade of the said Coal-Mine, to that Coal-Mine, and from the same. Yet the aforesaid (*Defendants*) not ignorant of the Premises, but contriving, and maliciously intending her CS the Younger, against all Right to oppress, and to hinder and deprive her of the Profit of her Coal-Mine aforesaid, on the aforesaid fifteenth Day of *April*, in the fifth Year above said, and at diverse Days and Times between the same Day, and the Day of Exhibiting of the Bill of her C the Younger, to wit, daily, and every Day, within that Time, at *F* aforesaid, obstructed, and stopt up the Way aforesaid, by the setting up, and keeping shut, a certain Gate across the Way, in the Passage aforesaid, and have kept, held, and continued obstructed, stopt, and set up ; so that not only the same C the Younger, with her Carts and Carriages for the necessary and convenient Trade of her Coal-Mine was hindred for the same Time to pass over thereto by the same Way, but also several Persons, to wit, *SC*, *WF*, *IW*, *RW*, and *PW*, and several other Persons, who would buy Coals at the Coal-Mine of her C the Younger, and bring and carry

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them

King's Bench. them from thence by the same Way, if the said Way had been open, would not, and refused to buy Coals at the Coal-Mine aforesaid, and got, and bought great Quantities of Coals elsewhere; and so the same C the Younger, lost the Profit of the said Coal-Mine, for the whole same Time, to the Damage of her C the Younger, One Hundred Pounds; and therefore brings her Suit, &c.

For Rescuing Goods Levied on a Fieri Facias, issuing out of the Court of Common Pleas.

York, to wit, NS, Complains of James Murgatroyd, SB, TR, JG, WC, and TM, in Custody of the Marshal of the Marshalsea, of the Lord the King, before the King himself, being for that, to wit, That whereas he, the same (Plaintiff,) otherwise, in the Court of the Lord the now King, to wit, in the Term of St. Michael, in the fifth Year of the Reign of the said Lord the now King, before Robert Eyre, Knight, and his Companions, then Justices of the said Lord the King, of the Bench at Westminster, in the County of Middlesex, by the Consideration of the same Court, had recovered against WM, late of R, in the County of York aforesaid, Gent. HM, late, &c. and TM, late of, &c. as well a certain Debt of Three Thousand Pounds, as fifteen Pounds, which were adjudged to the same (Plaintiff,) in the Court of the said Lord

Lord the King, of the Bench, for his Damages which he had sustained, by Occasion of the Detention of that Debt, and whereof they are Convicted, so as by the Record and Process thereof, in the same Court of the Bench aforesaid, before the Justices of the same Bench at *Westminster* aforesaid remaining, more fully appears. And whereas also the same (*Plaintiff*,) for the obtaining of the Debt and Damages aforesaid, afterwards, to wit, the twelfth Day of *February*, in the fifth Year of the Reign of the said Lord the now King, had prosecuted out of the Court of the Bench aforesaid, at *Westminster*, in the County of *Middlesex*, a certain Writ of the said Lord the King, directed to the then Sheriff of *York*, to cause to be made Two Thousand nine Hundred and ninety nine Pounds, Parcel of the Debt aforesaid, and seventeen Pounds for the Damages aforesaid, of the Lands and Chattels of the aforesaid (*Defendant*;) by which said Writ of the said Lord the King, the same Sheriff of *York* was commanded, that of the Lands and Chattels of the aforesaid (*Defendant*,) in his Bailiwick, he cause to be made Two Thousand nine Hundred eighty and eight Pounds, Parcel of the Debt aforesaid, and Three Hundred seventeen Pounds for the Damages aforesaid, in Form aforesaid recovered. And that he should have that Money before the Justices of the said Lord the King at *Westminster*, in fifteen Days from the Day of *Easter*, to be rendered unto the aforesaid (*Plaintiff*,) of the Debt and Damages aforesaid, whereof they were

King's Bench. convicted. And that he should have there then that Writ, which said Writ, the aforesaid (*Plaintiff*) afterwards, and before the Return of the same, to wit, the twenty second Day of *March*, in the Year aforesaid, at the City of *York*, in the County of *York* aforesaid, delivered to one *P M*, Knight, then being Sheriff of *York* aforesaid, in Form of Law to execute; by Virtue of which said Writ afterwards, and before the Return of the same, on the twenty fourth Day of *March*, in the Year last aforesaid, at the City of *York* aforesaid, the aforesaid *P* then being Sheriff of the County of *York* aforesaid, took, and seized into his Hands, diverse Goods and Chattels of the aforesaid (*Defendant*,) to the Value of Two Thousand nine Hundred eighty and eight Pounds, Parcel of the Debt and Damages aforesaid; and of the same Goods and Chattels intended to cause to be made so much of the said 2988 *l.* of the Debt and Damages aforesaid, and then had the same Goods and Chattels in his Hands, until the aforesaid (*Defendant*) afterwards, to wit, the aforesaid Twenty-fourth Day of *March*, in the Year last aforesaid, at, &c. by Force and Arms, &c. together with the said *S B*, *T R*, *J G*, *W C*, and *T M*, took and rescued the Goods and Chattels aforesaid out of the Hands and Custody of the aforesaid *P M*, and the same took and carried away to divers Places unknown, so that the aforesaid then Sheriff could not cause to be made the Debt and Damages aforesaid of the same Goods and Chattels, by which the same (*Plaintiff*) is deprived of
his

his Debt and Damages aforesaid, and hath ^{King's Bench} wholly lost the same; wherefore the same (Plaintiff) saith, that he is the worse, and hath Damage to the Value of Three Thousand Pounds, and thereof brings his Suit, &c.

*For warranting Weather Sheep sound,
when they were rotten and infected.*

Middlesex, to wit, A B Complains of J D, in Custody of the Marthal, &c. for that, to wit, That whereas the same (Plaintiff) on the Eighth Day of October, in the sixth Year of the Reign of the Lord George the Second, now King of Great Britain, at Westminster, in the County of Middlesex aforesaid, bargained with the aforesaid (Defendant) to buy of the aforesaid (Defendant) One Hundred Weather Sheep, the aforesaid (Defendant) then and there knowing the Weather Sheep aforesaid to be unsound and infected with the Disease called the Rot, falsely and fraudulently bargained and sold the said One Hundred Weather Sheep to the same (Plaintiff) warranting them sound, the same Day and Year aforesaid, at Westminster aforesaid, for a great Sum of Money, to wit, for Twenty Pounds of lawful Money of Great Britain, which said Weather Sheep then were unsound and infected with the aforesaid Disease called the Rot, and Forty of those Weather Sheep died of that Disease, and the Residue of them were putrid and infected, and became of no Value to the same (Plaintiff;) wherefore the same (Plaintiff) saith, that he is the worse,

King's Bench. and hath Damage to the Value of 30 l. and thereof brings his Suit, &c.

For selling another Man's Cow, warranting it to be his own.

Middlesex, to wit, *A B* Complains of *C D*, in the Custody of the *Marshal*, &c. for that, to wit, That whereas the same (*Plaintiff*) the Ninth Day of *October*, in the sixth Year of the Reign of the Lord *George*, now King of *Great Britain*, &c. at *Westminster*, bargained with the aforesaid (*Defendant*) to buy from the same (*Defendant*) a certain Cow, the aforesaid (*Defendant*) knowing the Cow aforesaid to be the Cow of one *R N*, falsely and fraudulently then and there sold the same to him (*Plaintiff*) warranting the same Cow as (*Defendant's*) own proper Cow, for a great Sum of Money to be paid to the aforesaid (*Defendant*) by the aforesaid (*Plaintiff*;) and afterwards, to wit, the Day and Year above-said, at *Westminster* aforesaid, the aforesaid *R N* took and carried away that Cow, as his own proper Cow, from the same (*Plaintiff*) and so the aforesaid (*Defendant*) hath deceived and defrauded him (*Plaintiff*) to the Damage of him (*Plaintiff*) Ten Pounds, and therefore he brings his Suit, &c.

For

For selling corrupt Malt.

Lincoln, to wit, *A B* Complains of *Phillip P*, in Custody of the Marshal, &c. for that, to wit, That whereas the same (*Plaintiff*) the First Day of *June*, in the sixth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. and for a long Time then last past, was a Brewer of hopped Beer, at *F*, in the County aforesaid, and for the whole Time aforesaid, made good and wholesome hopped Beer, of good and sound Malt, and the same Beer sold and uttered to diverse of the King's loyal Subjects, as well in the Suburbs of the City of *Lincoln*, as in diverse Villages thereabouts, inhabiting and having Families, and by Means thereof the same (*Plaintiff*) gained and got good Gain and Profit towards the Maintenance of himself and Family. And whereas also, the aforesaid (*Defendant*) the same Day and Year abovesaid, at *F* aforesaid, in the County aforesaid, sold Two Hundred Quarters of good, sound, and Merchantable Malt, to make hopped Beer with the same Malt, to be delivered to the same (*Plaintiff*) at a certain Wharf called *Peel*, in the County of *Surry*, at such Times as the same (*Plaintiff*) should send to the aforesaid (*Defendant*) for the same, he the same (*Plaintiff*) paying to the aforesaid (*Defendant*) for every Score of Malt, so as aforesaid sold, and to be delivered, 23 *l.* lawful Money of *Great Britain*, amounting in the whole to 230 *l.* whereof 200 *l.* by him (*Plaintiff*) were to be paid to the

King's Bench. the Hands of the aforesaid (*Defendant*) before *Sturbridge* Fair then next following, and in Part Performance of the Bargain aforesaid, the same (*Defendant*) delivered to the same (*Plaintiff*) One hundred and twenty five Quarters of Merchantable Malt, to wit, at the Wharf aforesaid; yet the same (*Defendant*) maliciously contriving, and fraudulently intending him (*Plaintiff*) craftily and subtilly to deceive and defraud of the Residue of the Bargain of Malt aforesaid, afterwards, to wit, the last Day of *July*, in the Year above-said, and the twentieth Day of *October* next following, at the Wharf aforesaid, delivered to the same (*Plaintiff*) Seventy five Quarters of bad and corrupt Malt, the Residue of the aforesaid Two hundred Quarters of Malt, so as aforesaid agreed for, the same (*Defendant*) knowing the same Seventy five Quarters of Malt, Residue of the aforesaid Two hundred Quarters of Malt aforesaid, to be unwholesome and corrupt; and he (*Plaintiff*) not knowing the Corruption of the same Seventy five Quarters, so as aforesaid delivered to him the same (*Plaintiff*) that corrupt Malt afterwards, to wit, the first Day of *November*, in the Year above-said, at *F* aforesaid, brewed and converted into hopped Beer, and the hopped Beer so brewed and made of the same bad and corrupt Malt, became unwholesome and corrupt; by Means whereof the same (*Plaintiff*) in selling and uttering the aforesaid unwholesome hopped Beer, so as aforesaid brewed and made of the bad Malt, to several Subjects of the said Lord the King, now inhabiting in and near *Lincoln* aforesaid,

foresaid, to whom the same (*Plaintiff*) before King's Bench. used and was accustomed to sell and utter good and wholesome hopped Beer, not only falls into great Disgrace, but also the same (*Plaintiff*) for that Cause of the hopped Beer aforesaid, being so as aforesaid by him made and brewed of the aforesaid bad and corrupt Malt, hath wholly lost to the Value of 120 l. to the Damage of him (*Plaintiff*) 200 l. and therefore he brings his Suit, &c.

For Chandler's Goods bought by Husband and Wife, and sold by Wife when Sole.

Middlesex, to wit, Be it remembered, That *Against an At-*
on *Wednesday* next, after fifteen Days of *torney*.
Easter, that same Term, before the Lord the King at *Westminster*, came J C, and E his Wife, by *Josias Fitchet*, their Attorney, and exhibited into the Court of the said Lord the now King here, their certain Bill against *HH*, Gentleman, one of the Attornies of the Court of the Lord the King, before the King himself, being present here in Court, in his proper Person, of a Plea of Trespass upon the Case, and the Pledges of prosecuting are, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, to wit;
Middlesex, to wit, J C, and E his Wife, complain of *HH*, Gentleman, one of the Attornies of the Court of the Lord the King, before the King himself, being present here in Court in his proper Person, for that, to
wit,

King's Bench. wit, That whereas the aforesaid *H*, the twenty seventh Day of *January*, in the Year of our Lord One thousand seven hundred and thirty one, at the Parish of *St. Andrew, Holborn*, in the County of *Middlesex*, in Consideration that the same *Elizabeth* (whilst she was single) at the special Instance and Request of the aforesaid *H*, had sold and delivered to the same *H*, from Time to Time, and at several Times, for the Space of one Year and more then last past (the same *Elizabeth* then, and for the whole Time aforesaid being, and exercising the Trade or Business of a Chandler) diverse Quantities of Tea, Sugar, Coffee, Butter, Salt, Small-beer and Candles, for the Sustenance and Support of him *H* and his Family, assumed upon himself, and then and there faithfully promised the same *Elizabeth*, that he the aforesaid *H*, so much Money as the same *E* for the aforesaid Tea, Sugar, Coffee, Butter, Salt, Small-beer, and Candles aforesaid reasonably deserved to have at the Time of the Sale and Delivery of the same to the same *Elizabeth*, (whilst she was single,) when he should be thereof afterwards required, would well and truly pay and content. And the same *J* and *E* aver, that she, the same *E*, (whilst she was single,) and at the Time of the Sale and Delivery of the same Tea, Sugar, Coffee, Butter, Salt, Small-beer, and Candles aforesaid, for the same reasonably deserved to have of the same *H*, Twelve Pounds of lawful Money of *Great Britain*, whereof the aforesaid *H* afterwards, to wit, the same Day and Year, at the Parish
afore-

aforesaid, of the same *E* (whilst she was single) then and there had Notice. And whereas the aforesaid *H*, afterwards, to wit, the Twenty eighth Day of *January*, in the Year of our Lord One thousand seven hundred and thirty one, aforesaid, at the Parish aforesaid, was indebted to the same *E* (whilst she was single) in other Twelve Pounds of like lawful Money of *Great Britain*, for diverse other Quantities of Tea, Sugar, Coffee, Butter, Salt, Small-beer, and Candles, of her *E*, and by the same *E* (whilst she was single) then being a Chandler to the same *H*, and at the special Instance and Request of him *H*, for other Sustenance and Support of him *H* and his Family aforesaid, before that Time sold and delivered, and being so thereof indebted, the aforesaid *H*, in Consideration thereof afterwards, to wit, the same Twenty eighth Day of *January*, in the Year aboveaid, at the Parish aforesaid, assumed upon himself, and to the same *E* then and there faithfully promised, that he the aforesaid *H* would well and truly pay and satisfy the same *E*, the said last mentioned Sum of Twelve Pounds, when he should be thereof afterwards requested. And whereas also afterwards, to wit, the first Day of *February*, in the Year of our Lord One thousand seven hundred and thirty one, aboveaid, at the Parish aforesaid, in the County aforesaid, the aforesaid *H* was indebted to the same *J* and *E*, in other Twelve Pounds of lawful Money of *Great Britain*, for diverse Goods, Wares, and Merchandizes of her *E*,

King's Bench. *E*, (whilst she was single) and by the same *E*, (whilst she was single) to the same *H*, and at his special Instance and Request, before that Time sold and delivered, and the aforesaid *H* being so thereof indebted, he the same *H*, in Consideration thereof afterwards, to wit, the same First Day of *February*, in the Year of our Lord One thousand seven hundred and thirty one, abovesaid, at the Parish aforesaid, assumed upon himself, and then and there faithfully promised the same *J* and *E*, that he the aforesaid *H*, the aforesaid last mentioned Twelve Pounds, would well and truly pay and satisfy to the same *J* and *E*, when he should be thereto afterwards requested. And whereas the aforesaid *H*, afterwards, to wit, on the same First Day of *February*, in the Year of our Lord One thousand seven hundred and thirty one abovesaid, at the Parish aforesaid, in the County aforesaid, in Consideration that the aforesaid *E*, (whilst she was single) at the special Instance and Request of him *H* had before then sold and delivered to the said *H*, diverse other Goods, Wares, and Merchandizes of her *E*, (whilst she was single) assumed upon himself, and then and there faithfully promised the same *J* and *E* to pay them so much Money as the same Goods, Wares, and Merchandizes last mentioned, were reasonably worth, at the Time of the Sale and Delivery of the same, when he should be thereof afterwards requested. And the same *J* and *E* aver, That the aforesaid Goods, Wares, and Merchandizes last mentioned, at the Time of

of the Sale and Delivery of the same were reasonably worth other Twelve Pounds of like lawful Money of *Great Britain*, whereof the same *H* afterwards, to wit, the same Day, Year and Place last abovesaid, had Notice. And whereas also the aforesaid *H*, *J* and *E*, afterwards, to wit, the Third Day of *February*, in the Year of our Lord One thousand seven hundred and thirty one, abovesaid, at the Parish aforesaid, in the County aforesaid, accompted together among themselves, of, and concerning diverse Sums of Money to the same *E*, (whilst she was single,) by the aforesaid *H*, before that Time due, and then being in Arrear and unpaid. And upon that Account, the aforesaid *H* was then, and there found in Arrear towards the same *E*, (whilst she was single,) in three Pounds Six-pence and one Farthing, of lawful Money of *Great Britain*; and so being thereof found in Arrear, the aforesaid *H* in Consideration thereof afterwards, to wit, the same Day and Year last abovesaid, at the Parish aforesaid, in the County aforesaid, assumed upon himself, and then and there faithfully promised the same *J* and *E*, that he, the same *H*, the aforesaid three Pounds Six-pence and one Farthing, to the same *J* and *E*, when he should be thereof afterwards required, would well and truly pay and content. Yet the aforesaid *H* not at all regarding his several Promises and Assumptions aforesaid, in Form aforesaid made, but contriving, and fraudulently intending the same *E*, (whilst she was single,) and the same *J* and *E* after the Espousals between them

King's Bench.

King's Bench. them celebrated, in this Behalf craftily and subtilly to deceive and defraud, the aforesaid several Sums of Money, or any Penny thereof, to the same *E*, (whilst she was single,) nor to the same *J* and *E*, after their said Marriage, although the aforesaid *H*, by the same *E*, (whilst she was single,) afterwards, to wit, the same twenty eighth Day of *January*, in the Year of our Lord abovesaid, and by the same *J* and *E* after their Marriage, to wit, the same third Day of *February*, in the Year abovesaid, at the Parish aforesaid, had been required so to do, hath not paid, or any ways contented for the same; but hath hitherto altogether refused, and still doth refuse to pay them, or either of them, or any ways satisfy them, or either of them for the same, to the Damage of them *J* and *E* twenty Pounds; and thereof they bring their Suit, &c.

Plea. And the aforesaid *H* in his proper Person comes and defends the Force and Injury when and where, and as this Court shall think fit, and saith, that the aforesaid *J*, and *E* his Wife, ought not to have, or maintain their Action aforesaid thereof against him, because he saith, That one *William Saunders*, otherwise, to wit, in the Term of *Easter*, in the third Year of the Reign of the Lord the now King, impleaded the same *E*, (whilst she was single,) in the Court of the Lord the now King, before *Robert Eyre*, Knight, and his Companions then Justices of him the Lord the King, of the Bench at *Westminster*, in a certain Plea of Debt upon Demand, for ten Pounds;

Pounds; and because the aforesaid *E* came ^{King's Bench.} not in the aforesaid Court of the Bench aforesaid, to answer to the same *William Saunders*, in the Plea aforesaid, the same *E*, according to the Law and Custom of this Kingdom of *England*, was put into Exigent, to be outlawed; and for that Reason, afterwards, to wit, *Saturday* next before the Feast of the Purification of the *Blessed Virgin Mary*, in the fourth Year of the Reign of the said Lord the now King, by due Course of Law, at the Suit of the aforesaid *William*, was outlawed, (*waved*.) in *London*, and still is outlawed, (*waved*.) at the Suit of the aforesaid *William*, so as by the Record and Process thereof, in the same Court of Bench aforesaid returned, and now remaining, more fully appears; which said Outlawry still in its full Force, Strength, and Effect, remains, not reversed or annihilated, and this he is ready to justify by that Record: Wherefore he prays Judgment if the aforesaid *J* and *E* ought to have, or maintain their Action aforesaid thereof, against him.

And the aforesaid *J* and *E* say, That they, for any thing by the aforesaid *H* above in Pleading alledged, ought not to be precluded from having their Action aforesaid thereof, against him, because they say, that the same *H* hath not any such Record of the Outlawry aforesaid, in the aforesaid Court of the said Lord the King of the Bench, remaining, as he, the same *H*, above in Pleading hath alledged; and this they are ready to justify by that Record. And it is given to the

E e

afore-

King's Bench. *aforesaid H*, by the Court of the said Lord the now King here, that he may have that Record before the Lord the King at *Westminster*, ——— next after ——— at his Peril; the same Day is given to the Parties *aforesaid* there, &c.

Upon a Bill of Exchange against the Drawer.

London, to wit, *Caleb Powel* Complains of *John Edwards*, in Custody of the Marshal, &c. for that, to wit, That whereas the *aforesaid John Edwards*, on the eleventh Day of *May*, in the Year of our Lord One Thousand seven Hundred and thirty one, at *London*, in the Parish of the *Blessed Mary of the Arches*, in the Ward of *Cheap*, was a Merchant there residing, and Trafficking, and one *Andrew Clark*, the same Day and Year, was a Merchant, and a Person residing and trading at *Knighton*, in the County of *Radnor*, and the same *John* so being, residing, and Trading in the said Parish and Ward *aforesaid*, he, the same *John*, the same eleventh Day of *May*, in the Year *abovesaid*, according to the Use and Custom of Merchants in that Case used and approved of, from the Time whereof the Memory of Man is not to the contrary, made one Bill of Exchange in Writing, bearing Date the same Day and Year *abovesaid*, with the proper Hand and Name of him *John* subscribed, and directed the same Bill of Exchange to the *aforesaid Andrew Clark*, by the Name of Mr. *Andrew Clark*, at *Knighton*; by which said Bill of Exchange,

Exchange, he, the same *John*, requested the
aforesaid *Andrew*, to pay to the aforesaid
Caleb, by the Name of *Mr. Caleb Powell*, or
Order, upon Sight, fifty Pounds, Value re-
ceived, of him the aforesaid *Caleb*. And the
aforesaid *Caleb*, afterwards, to wit, the fifth
Day of *September*, in the Year abovesaid, at
Knighton aforesaid, shewed the same Bill of
Exchange to the aforesaid *Andrew*, and then
and there requested the aforesaid *Andrew* to
pay the aforesaid Sum of fifty Pounds in the
Bill aforesaid mentioned, to the same *Caleb*,
according to the Tenor and Effect of the
same Bill, which the aforesaid *Andrew* ab-
solutely refused to do. And the aforesaid
Caleb further avers, that the aforesaid Sum
of Money in the Bill aforesaid mentioned,
was not at any Time paid to the afore-
said *Caleb*, or any Order of his; of which
said Premises, the aforesaid *John* after-
wards, to wit, the twelfth Day of *Septem-
ber*, in the Year abovesaid, at *London* afore-
said, in the Parish and Ward aforesaid,
had Notice; by reason of which said Pre-
misses, the aforesaid *John*, according to the
aforesaid Use and Custom of Merchants,
from the whole Time aforesaid used, was
charged, and chargeable; and still is charge-
able, to pay to the same *Caleb*, the afore-
said fifty Pounds in the Bill of Exchange
aforesaid contained. And being so thereof
charged and chargeable, the aforesaid *John*,
in Consideration thereof afterwards, to wit,
the same Day and Year last abovesaid, at
London aforesaid, in the Parish and Ward
aforesaid, assumed upon himself, and then

Declarations in Case.

King's Bench. there faithfully promised the same *Caleb*, that he, the aforesaid *John*, would well and and truly pay, and satisfy to the same *Caleb*, the aforesaid fifty Pounds, in the Bill aforesaid contained, when he should be thereof afterwards requested.

And whereas also, &c. for Money had, and received.

And whereas also, &c. for Money borrowed, and lent.

Yet nevertheless, &c. as in other Declarations.

The End of the First Volume.

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FOR THE
KING'S BENCH.

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